

**Quarterly Report**  
of the  
**ATTORNEY GENERAL**  
of  
**ALABAMA**



**For the Period**  
**From January 1, 1964**  
**Through March 31, 1964**

**VOLUME 114**

RICHMOND M. FLOWERS, Attorney General



**QUARTERLY REPORT**  
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**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS  
OF ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from January 1, 1964 through March 31, 1964, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

**RICHMOND M. FLOWERS**  
Attorney General

**RICHMOND M. FLOWERS**

Attorney General

**HARVEY ELROD**

Deputy Attorney General

Dennis M. Lasseter  
Executive Assistant

Randolph G. Lurie  
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Revenue

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Herbert Burson

Charles P. Miller

William H. Burton, Jr.

James R. Payne

## **OPINIONS**



January 3, 1964

Hon. E. T. Carpenter  
Clerk of the Circuit Court  
Washington County  
Chatom, Alabama

Costs and Fees — Inferior Courts — Washington County.

Payment of the funds on hand held by Clerk of abolished Court to Clerk of newly created Court of General Sessions of Washington County and claims for fees on pending cases discussed generally.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion bearing date of December 5, 1963, is as follows:

"I am writing you and requesting that you render me an official opinion concerning my responsibilities, obligations and rights insofar as the same are effected by Act 137, House Bill 435, Regular Session 1963.

"I am the Clerk of the Inferior Court of Washington County, Alabama, which will be abolished by this Act as of midnight before the first Monday in January of 1964.

"There are some two hundred criminal cases that are now pending in the Inferior Court of Washington County, Alabama. On these cases, I have made partial collections for a long period of time and expect to have approximately \$6,000.00 or \$7,000.00 in the Inferior Court account at the time this court is abolished.

"Please advise as to the following questions:

"1. To whom am I to pay the money that is on deposit for partial payment of fines and court costs in the Inferior Court of Washington County; when should these funds be paid; and what type of receipt or evidence of payment will I need for my protection?

"2. With regard to the cases that are presently pending in the Inferior Court of Washington County and in which I have earned, prior to the effective date of said Local Act 137, certain fee, will I still be entitled to collect the fees on these cases after the Inferior

Court is abolished and these cases are transferred to the General Sessions Court?

"3. In the event that the cases that are now pending in the Inferior Court are nol-prossed by the General Sessions Court, will I be entitled to file a claim against Washington County for the fees that have been earned by me in connection with these cases prior to the time that the Inferior Court of Washington County was abolished?

"Your immediate attention to this matter will be greatly appreciated."

Act No. 137, General and Local Acts 1963, provides for the transfer of jurisdiction in the manner prescribed by Title 13, Section 393, Code of Alabama 1940.

In answer to your first inquiry, you should transfer all funds on hand to the Clerk of the Court of General Sessions and secure a receipt from him showing the amount applicable to each case. These funds should be turned over to the Clerk of the Court of General Sessions on the first Monday in January of 1964.

As to question No. 2, the Act creating the Court of General Sessions provides that all Court costs, collected, except the fees, commissions, or allowances of the sheriff, and fees of witnesses, shall be paid into the general fund in the county treasury. You would be entitled to collect the fees on the cases now pending in the Inferior Court which you have earned prior to date of abolition of said Inferior Court. As to your fees which are actually paid into Court, you should file your claims against the county general fund of the county.

In answer to your question No. 3, those fees earned by you which are payable from the fine and forfeiture fund, or its equivalent, are payable in accordance with Title 15, Sections 393 and 394, Code of Alabama 1940.

Yours very truly,

**RICHMOND M. FLOWERS**  
Attorney General



January 6, 1964

Honorable Melvin Bailey  
Sheriff, Jefferson County  
Court House  
Birmingham, Alabama

Property — Motor Vehicles — Sheriffs — Municipalities

Discussion of disposition and sale of motor vehicle left abandoned on highway when owner thereof cannot be ascertained.

Opinion by Assistant Attorney General Screws.

Dear Sir:

This is to acknowledge receipt of your letter of December 26, 1963, which is as follows:

"As Sheriff of Jefferson County, I respectfully ask your opinion as to the proper procedure to be followed in a situation that has developed in Jefferson County, and one which can be expected to reoccur in the future.

"On June 1, 1963, a 1955 Dodge automobile was discovered abandoned by a deputy sheriff. At his request, Long Lewis Hardware Company pulled the automobile to its place of business, and has stored it since that date. On July 20, 1963, a 1957 Plymouth automobile was likewise discovered and pulled in by Long Lewis.

"Despite a search for the owners of these two cars, no one has been found to claim them. The search included checking license tag registration, among other things.

"The two automobiles have value as junk only, and the storage charges and pull-in expenses have already exceeded the reasonable market value of both cars.

"Under Title 37, Section (1), Code of Alabama 1940 Municipal Corporations have the express power to dispose of property under the circumstances. However, there is no comparable Section under State law.

"Title 47, Sections 155-160 outline a procedure for disposing of lost property. My question is: May the Jefferson County Sheriff's Department, County Commission or Long Lewis Hardware Com-

pany proceed to sell these two automobiles under the procedure set out in Title 47, Sections 155-160? If not, is there any procedure under which these automobiles can be disposed of with adequate protection for this department and for the company which acted at the request of this department."

If the said abandoned property is found within the corporate limits of a municipality or within its police jurisdiction, and said municipality has an ordinance providing for the disposition of said property in accordance with Title 37, Section 490(1), Code of Alabama 1940, Recompiled 1958, in my judgment, the best procedure would be to follow the provisions thereof.

If the said abandoned property is found outside the police jurisdiction of a municipality and its corporate limits, or if within the corporate limits or the police jurisdiction of a municipality not having an ordinance provided for under Title 37, Section 490(1), *supra*, I find no specific statutory provisions regarding disposition of same. This being the situation, in my opinion, such property may be considered as "lost property."—Biennial Report of Attorney General 1928-30, page 97. The matter would then, therefore, be governed by Title 47, Chapter 4 (Section 155-160), Code of Alabama 1940, Recompiled 1958, and a sale made in accordance with Section 160, *supra*, in the same manner as a thing pledged.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

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January 10, 1964

Hon. Ed Pepper  
Commissioner  
Alabama Public Service Commission  
P. O. Box 991  
Montgomery, Alabama

Public Service Commission — Appropriations  
Constitution of Alabama, 1901.

1. The expenditure of funds deposited in a special fund in the State Treasury can only be made by an appropriation of the legislature.

2. The Public Service Commission is limited to the current appropriation in the payment of expenses incurred in supervising and inspecting transportation companies in Alabama.

3. The Public Service Commission has no authority to permit credits or rebates to transportation companies on the annual inspection and supervision fees required to be paid by Title 48, Section 156, Code of Alabama 1940, as Recompiled 1958.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion bearing date of December 13, 1963, is as follows:

"Important legal questions have arisen concerning the interpretation of Title 48, Sec. 156, Alabama Code 1940 (hereinafter referred to as 'Section 156'). Section 156 provides for the payment to the Alabama Public Service Commission of an annual inspection and supervision fee by transportation companies doing business in Alabama based on the gross receipts of such companies, and specifically provides:

" \* \* \* The Commission shall keep a true record of all such amounts so paid to it, but said amount when received by the Commission, shall be promptly paid over to the treasurer, and shall be held in a **separate fund** by, and shall be paid out by the treasurer **in payment of expenses incurred by the commission in the regulation of the transportation companies**, upon warrants drawn as provided by law upon the treasurer and approved as required by law. \* \* \* ' (Emphasis added)

"Pursant to the provisions of Title 55, Sec. 228, Alabama Code 1940, the Alabama Public Service Commission respectfully requests your opinion in writing on the following important legal questions concerning the interpretation of Section 156:

"(1) Is the Alabama Public Service Commission legally entitled to the use of this entire 'separate fund' (or such portion thereof as is necessary) for expenses incurred by it in the regulation of transportation companies (including the inspection and supervision of such business), or is the use thereof limited or restricted to the amount appropriated to it by the Legislature?

"(2) If the Alabama Public Service Commission finds it to be in

the public interest to subscribe to the services of a transportation company for the purpose of inspection and supervision of such services offered to the public, is the Commission entitled to have paid from the 'separate fund', in addition to the amount appropriated to it by the Legislature, the amount of the cost of such services (rates and charges therefor) as 'payment of expenses incurred by the Commission in the regulation' of the transportation company?

"(3) If answer to Question 2 is in the negative, may the Commission order or otherwise permit the transportation company furnishing these services to credit the charges therefor on the annual fee paid for inspection and supervision pursuant to section 156?"

Title 48, Section 156, Code of Alabama 1940, as Recompiled 1958, provides, in pertinent part as follows:

"The Commission shall keep a true record of all such amounts so paid to it, but said amount when received by the commission, shall be promptly paid over to the treasurer, and shall be held in a separate fund by, and shall be paid out by the treasurer in payment of expenses incurred by the commission in the regulation of the transportation companies, upon warrants drawn as provided by law upon the treasurer and approved as required by law."

Act No. 575, Acts of Alabama 1963, provides in pertinent part as follows:

"(32) PUBLIC SERVICE COMMISSION:

For the fiscal year ending  
September 30, 1964:

|                                                                      |            |
|----------------------------------------------------------------------|------------|
| For salary of the President<br>and two Associate Commissioners ..... | 33,500.00  |
| For other salaries .....                                             | 180,268.00 |
| For other expenses .....                                             | 76,553.00  |
| For equipment purchases .....                                        | 10,000.00  |
|                                                                      | <hr/>      |
| Total .....                                                          | 300,321.00 |

"For the fiscal year ending  
September 30, 1965:

|                                                                           |            |
|---------------------------------------------------------------------------|------------|
| For salary of the President<br>and two Associate Com-<br>missioners ..... | 33,500.00  |
| For other salaries .....                                                  | 182,428.00 |
| For other expenses .....                                                  | 76,553.00  |
| For equipment purchases .....                                             | 10,000.00  |
| <hr/>                                                                     |            |
| Total .....                                                               | 302,481.00 |

"The above appropriation to the Alabama Public Service Commission shall be payable only out of inspection and supervision fees paid by utilities and transportation companies, and such parts or percentage of fees and taxes paid by motor carrier or motor transportation companies as are now or may be set aside by law to be used by the Commission; and all receipts from fees and taxes paid to the Alabama Public Service Commission in excess of \$50,000.00 at the end of each fiscal year shall revert to the General Fund in the State Treasury."

Section 72, Constitution of Alabama 1901, provides as follows:

"No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof; and a regular statement and account of receipts and expenditures of all public moneys shall be published annually, in such manner as may be by law directed."

It will be noted that Section 156, *supra*, requires the Commission to pay over to the State Treasurer the amounts collected in fees for inspection and supervision of the transportation companies doing business in Alabama and this money is placed in a separate fund in the State treasury. This section is lacking in the elements necessary to constitute an appropriation, and cannot be interpreted as such.

Act No. 575, *supra*, appropriates from these fees a sum of money for the operation of the Commission. A part of the duties of the Commission so financed is the inspection and supervision of transportation companies in Alabama.

Section 72, Constitution of Alabama 1901, provides that no money shall be paid out of the State treasury except on appropriation by the Legislature.

Therefore, the answer to your first question is that the money collected as fees from transportation companies in Alabama for in-

spection and supervision, and deposited in the State treasury can be withdrawn only by virtue of an appropriation of the Legislature. Cf. 92 Quarterly Report of Attorney General, pages 11 and 20.

The answer to your second question is in the negative. Again, only the moneys that have been appropriated by the Legislature can be spent from the special fund in the State treasury heretofore mentioned.

The answer to your third question is in the negative.

There is no provision in Section 156, *supra*, permitting any deviation from the requirement that transportation companies doing business in Alabama and subject to regulation by the Commission must pay fees for inspection and supervision of said companies according to the schedule set out in said section.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

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January 13, 1964

Honorable W. Marvin Scott  
Justice of the Peace  
Buchmann Building  
Cullman, Alabama

Cullman County — Justices of the Peace — Costs and Fees — Sheriffs.

1. Cullman County Justices of the Peace required to pay sheriffs' fees to county governing body from insolvent cost fund in certain cases.
2. Sheriff, acting in capacity as constable only entitled to constable's fee for constable's duty.
3. Sheriff entitled to no fees from Justices of the Peace insolvent cost fund for services in cases made by State Troopers or Conservation Officers.
4. Justice of the Peace may pay own fees and costs from insolvent cost fund in certain cases made by State Troopers or Conservation Officers.

## Opinion by Assistant Attorney General Bridges.

Dear Sir:

Your request for an official opinion reads, in pertinent part, as follows:

"As Justice of the Peace of Cullman County, Alabama, Precinct No. 1, I respectfully request a ruling by your office on the following questions.

\* \* \*

"Question 1. Must the Justice of the Peace pay out of his fine and forfeiture funds to the Board of Finance and Control the insolvent fees the Sheriff would have earned were it not for the local law aforesaid. [Acts 1957, page 379]

\* \* \*

"The justice fees are the same now as they were in 1901. The Sheriff fees were as follows:

|         |        |
|---------|--------|
| Arrest  | \$2.00 |
| Bond    | 1.00   |
| Turnkey | 2.00   |
| <hr/>   |        |
| TOTAL   | \$5.00 |

"The Legislature enacted a law allowing the Sheriff 10 cents mileage. Then, on January 1, 1959, . . . following fees (became effective) for the Sheriff:

|                     |                        |
|---------------------|------------------------|
| Warrant of Arrest   | \$5.00                 |
| Commitment to jail  | 2.00                   |
| Approving bond      | 2.00                   |
| Mileage 10c per mi. |                        |
| <hr/>               |                        |
| TOTAL               | \$9.00 without mileage |

"Sometimes the mileage runs as high as \$5.00 making a total of \$14.00. The justice of the peace fees, without continuances, \$3.50.

"Question No. 2. How are the above fees pro rated . . . ?

"Question No. 3. Cases of arrest by the Highway Patrol, Con-

servation Officers, Water Patrol Officers and placed in jail, convicted by the Justice Court, given a jail sentence in lieu of a fine, and defendant is insolvent and unable to pay the cost. Question: Would the Justice of the Peace be required to remit \$2.00 to the Board of Finance and Control out of the justice of the peace fine and forfeiture funds under the Act governing the compensation of Sheriff aforesaid. Is the Justice of the Peace entitled to charge insolvent cost in these cases aforesaid?"

\* \* \*

The following statutes are pertinent to your inquiry:

Title 13, Section 418, Code of Alabama 1940, Recompiled 1958, providing, among other things, that:

"It is the duty of every justice of the peace and notary public having and exercising the jurisdiction of justices of the peace: . . .

\* \* \*

"To collect all fines imposed where the defendant is not sentenced to jail or hard labor to pay same; or an appeal is taken. He may deduct from fines and forfeitures collected by him, the amount due for his fees and those of the constable in cases in which the defendant was acquitted, or insolvent and unable to pay after conviction, a sum not to exceed fifty dollars for any calendar month; he shall pay the remainder of the fines and forfeitures collected by him to the treasurer or to the custodian of the county funds where there is no county treasurer, . . ."

Title 54, Section 18, Code of Alabama 1940, Recompiled 1958, providing as follows:

"The sheriff is authorized to execute all mesne and file [final] process which is required of constables, and shall receive the same fees and compensation therefor as constables except in cases of forcible entry and detainer and unlawful detainer; . . ."

Act No. 297, Acts of Alabama 1957, page 379, adopted pursuant to Constitutional Amendment No. 137 and providing in pertinent part:

"Section 1. The following officers of Cullman County shall receive the following annual salaries in lieu of all other compensation:

"(b) Sheriff \$8,500.00

\* \* \*



"Section 3. All fees, commissions, percentages, allowances, charges, and costs heretofore collected for the use of any of the officers enumerated in Section 1 of this Act shall be collected for the use of Cullman County, and shall be paid into the general fund of the county . . ."

The fund, not to exceed \$50.00 per month, provided for in Title 13, Section 418, supra, which a Justice of the Peace may use from his fines and forfeitures to pay costs and fees will be referred to in this opinion as the insolvent cost fund.

Your first question is answered in the affirmative. A Justice of the Peace in Cullman County is required to pay the Cullman County Board of Finance and Control from his insolvent cost fund the fees for services rendered by the Sheriff, acting in his capacity as a constable, as he is authorized to do by Section 18 of Title 54, supra, in cases where the defendant is acquitted or is insolvent and unable to pay costs after conviction. The Supreme Court of Alabama in **State v. Norwood**, 248 Ala. 128, 26 So.2d 577, held that such fees should be paid to the Sheriff from said fund; however, Section 3 of Act No. 297, supra, requires that these fees now be paid to the County Board of Finance and Control.

In answer to your second question you are advised that the Cullman County Board of Finance and Control should receive only constables fees from the insolvent cost fund for duties the sheriff performs in his capacity as a constable in cases where the defendant is acquitted or is insolvent and unable to pay costs after conviction. The sheriff is acting as constable in justice of the peace court cases except preliminary trials. **State v. Norwood**, 248 Ala. 128, 133, 26 So.2d 577; **Trapp v. State ex rel Burgin**, 122 Ala. 394, 25 So. 194. The only constable's duty mentioned in your example is service of a warrant of arrest. The constable's fee for serving a warrant of arrest is \$1.50. Title 11, Section 92, Code of Alabama 1940, Recompiled 1958.

The answer to the first part of your third question is in the negative. I assume that the \$2.00 Sheriff's fee to which you refer is for commitment to jail. In performing this duty the Sheriff is not acting in his capacity as a constable.

In response to the second part of your third question, it is my opinion that a Justice of the Peace may pay his costs and fees in a proper case from his insolvent cost fund where the arrest is made by a Highway Patrolman (now State Trooper) or a Conservation Officer (including Water Safety Patrolman). The fines and forfeitures from cases made by these officers do not make any contribution to the insolvent cost fund but there appears to be no authority for prohibiting the payment of Justice of the Peace costs and fees in such cases where

the defendant is acquitted or insolvent and unable to pay after conviction. See Quarterly Reports of Attorney General, Vol. 14, page 63; Vol. 21, page 102.

It should be noted that **State v. Norwood**, supra, overruled parts of at least two previous opinions of this office: Quarterly Reports of Attorney General, Vol. 17, page 78, headnote 7 and Vol. 28, page 135, headnotes 1 and 4.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

January 14, 1964

Hon. Sim W. Brown Chairman  
Jury Commission  
Morgan County  
Decatur, Alabama

Jury Commission — Jurors and Juries — Time of Meeting.

The Jury Commission of the several counties shall meet at the Courthouse in the county seat of the several counties any time between the first day of August and the twentieth day of December.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of December 20, 1963, is as follows:

"Title 30, Section 12, Code of Alabama, as last amended, provides that in counties exceeding 50,000 in population (such as Morgan County) the maximum amount payable to the Jury Commission shall be \$600.00 at the rate of \$10.00 per day. Obviously, this allows a Jury Commission in Morgan County to serve not more than sixty days in a year.

"Our question is: Is there any restriction as to what periods during the year we can meet or can we meet at any time during the

calendar year so long as we do not exceed the amount above provided for?

"We would appreciate a reply from you at your earliest convenience."

In reply to your inquiry, your attention is directed to Title 30, Section 20, Code of Alabama 1940, which reads, in part, as follows:

"The jury commission shall meet in the court house at the county seat of the several counties annually, between the first day of August and the twentieth day of December, and shall make in a well bound book a roll containing the name of every male citizen living in the county who possessed the qualifications herein prescribed and who is not exempted by law from serving on juries..."

It appears from the above-quoted section that the Jury Commission must meet at a time between the specified dates and no limitation is placed on the number of days for such meetings. They should of course meet a sufficient number of days to adequately and completely perform the duties prescribed by law.

Title 30, Section 12, Code of Alabama 1940, is in no sense a restriction on the number of days which the Jury Commission may meet. This section merely prescribes a maximum amount which may be paid members of the Jury Commission during any year. It is not a restriction on the number of days which Jury Commissions may meet and the Commission must also meet at any time for the purposes set out in Sections 22 and 23 of Title 30 of the Code.

Specifically answering your question, there is a requirement that the Jury Commissions of the several counties shall meet between the first day of August and the twentieth day of December—any number of days between these two dates may be used for meetings of the several Jury Commissions.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

January 15, 1964

Honorable George T. Culps  
Tax Collector of Madison County  
Madison County Court House  
Huntsville, Alabama

Elections — Poll Tax — Holidays

Although February 1, 1964, falls on Saturday during which Court Houses in certain Counties are legally closed, the tax collector is not authorized to collect poll taxes on the following Monday, February 3, 1964.

Opinion by Assistant Attorney General Hall.

Dear Mr. Culps:

Your letter of January 9, 1964, requesting my opinion with regard to the payment of the poll tax is as follows:

"The Madison County Court House closes each Saturday under 1959 act, No. 317, Page 896.

"February 1, 1964, the last day on which Poll Tax can be paid, falls on Saturday. My question is: Can we collect Poll Tax on Monday, February 3, because of being closed Saturday, February 1? "I would appreciate an answer as soon as possible so that I can advise the public as to which will be the last day Poll Tax can be paid; January 31, or February 3."

Section 2 of Act No. 317, Acts of 1959, Regular Session, p. 896, provides as follows:

"That in all counties of this State coming within the purview of this Act, the Board of Revenue or like governing body of such county is hereby authorized to fix and set aside and designate, by resolution, from time to time, one day out of each week other than Sundays for all court house offices and other county offices to be closed."

Section 178, Alabama Constitution of 1901, as amended by Amendment XCVI (96), provides as follows:

"To entitle a person to vote at any election by the people, he shall have resided in the state at least two years, in the county one year, and in the precinct or ward three months, immediately preceding

the election at which he offers to vote, and he shall have been duly registered as an elector, and shall have paid on or before the first day of February next preceding the date of the election at which he offers to vote, all poll taxes due from him for the two calendar years next preceding. Provided, that any elector who, within three months next preceding the date of the election at which he offers to vote has removed from one precinct or ward to another precinct or ward in the same county, incorporated town, or city, shall have the right to vote in the precinct or ward from which he has so removed, if he would have been entitled to vote in such precinct or ward but for such removal."

Section 194, Alabama Constitution of 1901, provides as follows:

"The poll tax mentioned in this article shall be one dollar and fifty cents upon each male inhabitant of the state, over the age of twenty-one years, and under the age of forty-five years, who would not now be exempt by law; but the legislature is authorized to increase the maximum age fixed in this section to not more than sixty years. Such poll tax shall become due and payable on the first day of October in each year, and become delinquent on the first day of the next succeeding February, but no legal process, nor any fee or commission shall be allowed for the collection thereof. The tax collector shall make returns of poll tax collections separate from other collections."

Title 51, Section 243, Code of Alabama 1940, Recompiled 1958, provides as follows:

**"Time limit for receiving.**—After the first day of February and before the first day of next October, the tax collector shall have no authority to receive or receipt for poll taxes due by any person."

In an opinion dated January 16, 1942, addressed to Hon. A. W. Gwaltney, Tax Collector of Houston County, Quarterly Report of Attorney General, Vol. 26, p. 9, these sections were construed, and it was held that although February 1 falls on a Sunday, a tax collector has no authority to receive or receipt for poll taxes on the following Monday, February 2.

Following the reasoning set out in that opinion, I must answer your inquiry in the negative. That is, although February 1, 1964 falls on Saturday when the Court House of your County is authorized by law to be closed, you cannot legally collect poll taxes on the following Monday, February 3, 1964.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

January 16, 1964

Honorable Marvin E. Edwards  
Mayor, City of Eufaula  
Eufaula, Alabama

Municipalities — Streets.

Authority of municipalities to make improvements upon property leased from the United States Government by a private corporation for commercial purposes discussed.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of December 10, 1963, is as follows:

"Mr. Lucien Abraham of Eufaula, Alabama, has discussed with me the development of a proposed Marina to be known as 'Chewalla Creek Marina' in the city limits of Eufaula on the impounded waters of Lake Eufaula. This construction will take place on a commercial concession site and will be leased by a private corporation from the United States Government.

"This private corporation desires to obtain an ARA Loan under Public Law 8727, and, as I understand the provisions of this law, there is a requirement that ten percent of the costs of the land, buildings, machinery and site preparation of any such project, whether industrial or recreational, must be done by someone other than the private corporation which will operate and own the Marina. I understand that this can be done by participation on the part of local governments in site preparation, earth moving, etc.

"I would like your opinion as to whether or not the City of Eufaula can legally participate in this project by making certain site improvements such as the laying of water lines on the property or possibly the moving of earth."

Reference is made to our telephone conversation of January 9, 1964, in which you asked this office to consider the legality of the construction of streets by the City of Eufaula upon the property to which your request refers.

The Water System of the City of Eufaula is operated by its Water and Sewer Board. Said Board is controlled by Act No. 175, Acts of Alabama 1951, page 416, as amended.

Under Section 4 of Act No. 175, supra, as amended by Act No. 176, Acts of Alabama 1953, page 229, said Water and Sewer Board is authorized to acquire easements or other property interests necessary or convenient for the efficient construction, maintenance and operation of its water and sewer systems. However, said Board has no authority to develop real property in any manner not connected with the operation of its water and sewer systems.

Therefore, I am of the opinion that the Water and Sewer Board of the City of Eufaula may, after acquiring the necessary property interests, perform the work needed to furnish water and sewer service to the commercial concession to which your request refers. This is the extent of the authority of said Board to develop said commercial concession.

This office held in an opinion rendered to the City Commission, City of Gadsden, under date of March 17, 1955 (not reported), that a municipality may not perform street work upon private property. We stated that the performance of such work would violate the Constitution of Alabama 1901, Section 94.

Therefore, I am of the opinion that the City of Eufaula may not construct and maintain streets upon property leased by a private corporation for commercial purposes from the United States Government. Of course, if the property to which your request refers includes a dedicated street, said City may maintain same.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

January 21, 1964

Hon. Charles C. Adams, Chairman  
Court of County Commissioners  
Tallapoosa County  
Dadeville, Alabama

Elections — Counties — Costs — Reimbursements.

Under the provisions of Chapter 4 of Title 17, Code of Alabama 1940, a county is entitled to be reimbursed the costs of preparing voting machines, installing the ballot labels, and transporting the machines to and from the voting places.

Opinion by Assistant Attorney General McQueen

Dear Sir:

Your request for an official opinion, bearing date of December 14, 1963, is as follows:

"We use voting machines in this County for our elections. Prior to each election the machines must be prepared and ballot labels installed for that particular election, using the proper number of counters depending on the number of candidates or amendments to be voted on. The machines must also be transported to each voting place in the County.

"Section 427, Title 17, Code of Alabama, defines elections expenses to which a county is entitled to reimbursement by the State.

"Should the County be reimbursed the cost of preparing the voting machines, installing the ballot labels, and transporting the machines to the various voting places on the same basis as they are reimbursed for other expenses enumerated in Section 427?"

My answer to your inquiry is in the affirmative.

Subsection (c) of Section 427 of Title 17, Code of Alabama 1940, provides as follows:

"§ 427. 'Expenses' defined.—As used in this chapter, the term 'expenses' shall include the following items, and no other: . . . (c) The costs of ballots, supplies and other materials required by law to be furnished to election officials. (In those counties and municipalities where voting machines are used, such voting ma-



chine shall not be considered as ballots, supplies or materials as herein used.) . . .”

Section 115(1) of Title 17, Code of Alabama 1940, reads as follows: “§ 115(1). Compensation and expenses of custodians of voting machines; expenses of transportation and operation.—1. Counties—All counties are hereby authorized and directed to pay to the custodian of voting machines, provided for by Code of 1940, Title 17, Section 115, reasonable compensation for his services, all necessary expenses incurred in transporting said machines to and from the polls, and all necessary expenses incurred in the operation of said machines during all elections held other than municipal elections, regardless of whether or not said counties have adopted the use of voting machines.”

It is obvious from the provisions of Subsection (c) of Section 427, *supra*, that the exception contained therein applies to the costs of the voting machine itself and not to the cost of ballot labels and other incidental expenses in preparing a voting machine to be used in an election.

It is clear from Section 115(1), *supra*, that the Legislature recognizes all necessary expenses incurred in transporting voting machines to and from the polls and all necessary expenses incurred in the operation of the machine during an election as a legitimate cost of the election.

You are, therefore, advised that in my opinion the counties in which voting machines are used should be reimbursed the cost of preparing the voting machines, installing the ballot labels thereon and transporting the machines to and from the various places of voting and such reimbursement should be in the manner and on the basis provided for in Chapter 4 of Title 17, *supra*. The necessary expenses in preparing a voting machine for operation in an election are no different in principle than those incurred in furnishing paper ballots and other necessary supplies and other materials in those counties in which voting machines are not used.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

January 21, 1964

Messrs. Grubb and LeMaistre  
City Attorneys  
City of Eufaula  
Eufaula, Alabama

Licenses — Municipalities — Taxes.

Under the facts presented, a municipality may impose licenses and taxes upon private persons who perform work or conduct businesses upon property within the municipality which is owned by the United States Government.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of December 6, 1963, is as follows:

"Recently (subsequent to May 31, 1941) the United States of America acquired title to a large amount of land in Barbour County, Alabama, in connection with its construction of the Walter F. George Lock and Dam and development of the Chattahoochee River for the purpose of navigation and flood control. In connection therewith it acquired two separate tracts of land within the corporate limits of Eufaula used respectively as a Coast Guard base and a marina. These two parcels were acquired by negotiation and not condemnation.

"The United States, acting through its Corps of Engineers, has entered into a contract with a private Contractor for the construction of certain improvements on the Coast Guard site. It has advertised for bids for a long term lease on the marina property whereby the lessee will, under plans prepared by and under the supervision of the Corps, make the improvements and operate the marina.

"The question has arisen and is hereby propounded as to whether or not these contractors are subject to payment of a municipal privilege license, building permit fee, gross receipts tax on materials, etc.

"We refer you particularly to Title 59, Section 19, Code of Alabama (1940). It is our understanding that there has been no special

cession of jurisdiction to the United States insofar as this particular property is concerned nor is it customary in such instances.

"We would also like to have your opinion as to the imposition of a municipal privilege license on the private lessee and operation of the marina.

"Your opinion is requested by Honorable Marvin E. Edwards, Mayor of Eufaula."

In the case of **Standard Dredging Corporation v. State of Alabama**, 271 Ala. 22, 122 So. 2d 280, the Supreme Court of Alabama held that the State may impose a license tax upon a contractor as a consequence of his acceptance and performance of a contract with the United States Government for maintenance dredging of the navigation channel in Mobile Bay. Under the principles set forth by the Court, such a license may be imposed if the contractor does the work or performs the contract in some place in this State.

The mere fact that work is performed or businesses are conducted by private persons upon property which has been purchased or acquired by the United States Government does not prevent the State or a municipality from enforcing laws and ordinances upon such private persons. To preclude the enforcement of such laws and ordinances, it is necessary that the State relinquish jurisdiction over the property involved and cede jurisdiction thereover to the United States Government. Title 59, Section 19, Code of Alabama 1940. See Quarterly Report of Attorney General, Vol. 12, page 202.

Therefore, I am of the opinion that the City of Eufaula may, under the facts presented, impose its licenses and taxes upon the lessee of the marina to which your request refers and upon the contractors who construct improvements upon the property owned by the United States Government.

Very truly yours,

**RICHMOND M. FLOWERS**  
Attorney General

January 22, 1964

Hon. Reuben K. King, Commissioner  
State Department of Pensions and Security  
Administrative Building  
64 North Union Street  
Montgomery 4, Alabama

Pensions and Security — Blind Persons.

The State Department of Pensions and Security does not have authority to increase or decrease, by policy or regulation, the maximum allowance of seventy dollars for blind applicants as a basic grant provided for in Act No. 574 of the 1963 Regular Session of the Legislature.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion bearing date of January 9, 1964, is as follows:

"Your attention is called to Section 3 of Act No. 574 of the 1963 regular session of the Legislature, which section provides:

"Any applicant who qualifies under the provisions of this act shall be entitled to an amount of assistance which, when added to the income of the applicant from all other sources equals seventy dollars (\$70) per month. The value of any income or resources which is exempt pursuant to the Federal Social Security Act shall be excluded. In any case where it is found that the needs of an applicant exceed the maximum provided by the section, an additional amount of assistance shall be paid as necessary to meet his need. The additional amount is intended to provide additional assistance to persons with needs arising because of circumstances and situations not common to all recipients which are not included or not adequately covered by the maximum allowance of seventy dollars (\$70) provided by this section."

"This Department has interpreted this new law, affecting blind applicants and recipients, to mean that the Legislature has restricted the Department from changing the maximum amount of \$70.00 as a grant representing basic need for blind applicants and recipients. In other words, every person who is eligible for aid to the blind will either receive \$70.00 per month or the eligible person's payment plus his income and resources will equal \$70.00 per

month for basic needs common to all aid to the blind recipients. The Department has developed standards for basic needs such as food, clothing, etc. and has also developed policies for some special needs such as nursing home care, etc.

"This Department has understood that this restriction does not apply to the special needs but refers to the basic allowance mentioned in Section 3.

"Will you please give me your official opinion concerning this Department's authority to increase or decrease, by policy or regulation, this maximum allowance for basic needs referred to in Section 3 of Act No. 574 of the 1963 Regular session of the Legislature."

You have asked this office whether your Department is authorized to increase or decrease, by policy or regulation, the allowance for basic needs for blind applicants, referred to in Act No. 574 of the 1963 Regular Session of the Legislature relating to public assistance for the blind. Section 2 of Act No. 574, like your basic Welfare Act, Act No. 703, General Acts 1951, provides in part:

"Assistance to the blind shall be payable under this act to or on behalf of any person who shall comply with the other requirements of this chapter and who: (a) is blind according to the definition of blindness established by the state department; (b) has not sufficient income and resources to provide a reasonable subsistence compatible with decency and health as further provided in this act; provided, however, that any income or resources required or permitted by the Federal Social Security Act or regulations made thereunder to be disregarded are hereby excepted."

Section 8 of Act No. 574 provides as follows:

"All laws or parts of laws which conflict with this Act are repealed. Should any portion, section, or clause be declared or adjudicated to be contrary to or inconsistent with the provisions of the Social Security Act, as amended, that portion, section or clause of this Act shall have no further force of effect."

The Legislature positively intended that the new blind law not contravene the pertinent provisions of the Social Security Act.

Title X, Section 1002 (a), Social Security Act, as amended (see Compilation of the Social Security Laws, 1962, 87th Congress, 2nd Session, House of Representatives, Document No. 616, pp. 173-174), provides in part as follows:

"A State plan for aid to the blind must provide that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the

blind, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, the State agency shall disregard (A) the first \$85 per month of earned income, plus one-half of earned income in excess of \$85 per month, and (B) for a period not in excess of twelve months, such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan."

It is clear that Section 3 of Act No. 574 cited in your request is not in conflict with these new provisions of the Social Security Act, since the income referred to in the Social Security Act relates to earned income which is to be disregarded in computing the assistance grant. See Quarterly Report of Attorney General, Vol 3, page 55 (April 1, 1963 through June 30, 1963).

We, therefore, come to the question as to whether the amount mentioned in Section 3 of Act No. 574 is a maximum basic grant that the Department can pay needy blind recipients. Section 3 states in part:

"... In any case where it is found that the needs of an applicant exceed the maximum provided by the section, an additional amount of assistance shall be paid as necessary to meet his need. The **additional amount is intended to provide additional assistance to persons with needs arising because of circumstances and situations not common to all recipients which are not included or not adequately covered by the maximum allowance of seventy dollars (\$70.)** provided by this section." (Emphasis supplied.)

As to the matter of the basic grant, it appears that your Department does not have authority to increase or decrease, by policy or regulation, the maximum allowance referred to in this Act. You will notice that the initial phrase in Section 3 provides that the applicant:

"Shall be entitled to an amount of assistance which, when added to the income of the applicant from all other sources equals seventy dollars (\$70.) per month."

Subsequently, this section refers to that amount as "the maximum." The last sentence of this section refers to the maximum allowance of seventy dollars (\$70.) provided by this section. By using the words "maximum allowance" it would appear that the Legislature, in this Act, has undertaken a definition of basic need for blind applicants. It appears that the wording of this section actually restricts this Department from permitting a base of more than seventy dollars. Further, the Act purports to define that a blind applicant needs at least seventy dollars in order to have "a reasonable subsistence compatible with decency and health." Section 3 makes it clear that such applicant "shall

be entitled to an amount when added to the income of the applicant from all other sources equals seventy dollars (\$70.) per month." (Emphasis supplied) The Department, therefore, would not be authorized to decrease the amount referred to here. The Legislature has made seventy dollars a mandatory amount which this Department cannot change by policy or regulation. This does not preclude the authority to provide additional assistance to persons with special needs arising because of circumstances and situations not common to all recipients and which are not included or not adequately covered by the seventy dollars (\$70.) per month maximum allowance. The question of any special needs for blind recipients, addresses itself to the Department and not to this office.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

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January 24, 1964

Honorable Earl C. Morrison  
Mayor, Town of Ohatchee  
Ohatchee, Alabama

Municipalities — Officers and Offices — Sheriffs.

1. A councilman who is entitled to compensation holds an office of profit.
2. A deputy sheriff does not hold an office of profit.
3. A person may at one and the same time serve as councilman and deputy sheriff.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of December 28, 1963, is as follows:

"I would appreciate very much having your opinion on the following matter:

"One of the members of the Ohatchee Town Council who was duly

elected and took office October 1, 1960, has accepted a position as Deputy Sheriff of Calhoun County and has been sworn in for guard service under Calhoun County Sheriff who has the contract for this police work at Alabama Power Company dam development near Ohatchee. These guards are uniformed and equipped as full time deputy sheriffs and work regular shifts.

"We would like to know if this Councilman can legally hold both the position of Town Councilman and Deputy Sheriff."

The Constitution of Alabama 1901, Section 280, provides that no person shall hold two offices of profit at one and the same time in this State except justices of the peace, constables, notaries public and commissioners of deeds. See also Title 41, Section 5, Subsection 7, Code of Alabama 1940.

This office has held that a councilman who is entitled to compensation holds an office of profit within the meaning of Section 280, *supra*. Quarterly Report of Attorney General, Vol. 103, page 8.

However, the Supreme Court of Alabama in the case of **Ward et al v. State ex rel, Goldsmith**, 203 Ala. 306, 82 So. 662, held that a deputy sheriff does not hold an office of profit. See **Kemp et al v. Wilson**, 17 Ala. App. 224, 84 So. 636.

Therefore, I am of the opinion that the person to whom your request refers may at one and the same time hold the office of councilman of the Town of Ohatchee and serve as a deputy sheriff of Calhoun County.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

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January 24, 1964

Honorable Charles E. McNeil, President  
Board of School Commissioners of Mobile County  
Mobile, Alabama

Schools — County Superintendents of Education —  
Constitutionality — Expenses — Mobile County

The paying of a flat expense allowance in lieu of actual expenses, heretofore authorized and allowed to the Superin-



tendent of the Mobile Public School System, and being a reimbursement commensurate therewith moneywise, does not come within the inhibition of Section 68, Section 281, or Amendment XCII(92) of the Constitution of Alabama 1901, as such does not constitute an increase or decrease in compensation of said officer during the term for which he was appointed or elected.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of January 11, 1964, is as follows:

"Under and pursuant to the provisions of law of the State of Alabama which authorize and require the Attorney General to give his opinion on any question of law connected with the duties of, among others, county boards of education, when requested so to do in writing, and particularly under and pursuant to the provisions of Sections 240 and 241 of Title 55 of the Code of Alabama of 1940; the Board of School Commissioners of Mobile County (hereinafter sometimes for brevity styled the 'School Board' or the 'Board') does hereby request of you, in writing, your opinion on the questions of law connected with the duties of the said School Board, as are set out hereinafter.

"First are stated the facts out of which grows the question propounded.

#### **"The Facts**

"At a regular meeting of the Board on May 11, 1960 Commissioner McNeil offered the following resolution:

"I move that Dr. Burns be re-elected as the Superintendent of the Mobile Public School System, his term of office to run for four years from September 1st, 1960.'

"This motion being duly seconded was unanimously adopted.

"Commissioner McNeil then made the motion set out below:

"I further move that the salary of the Superintendent, Dr. Burns, be set at \$16,000 per annum effective September 1st, 1960.'

"This motion being duly seconded was unanimously adopted.

"Dr. Burns was then called into the meeting and was informed by the Board that he had made an excellent Superintendent and that they looked forward to serving with him for another four years. Dr. Burns made an appropriate reply.

"Dr. Burns then reminded the Board that it would be necessary also for the Board to give consideration to what travel allowance should be made to the Superintendent. Commissioner McNeil replied, for the Board, that the Superintendent's expenses should be paid by the Board for all business trips made by him out of the county; that a record of expenses connected therewith should be kept and reported as a basis for reimbursement and that for trips made in the county, the Superintendent should keep an account of his mileage and be reimbursed on that basis. This plan was adopted and remained in force until September 25, 1963.

"The Superintendent makes about four trips a year outside the county on professional business for the Board, some of them to distant places. In such instances he keeps an accurate record of expenses and submits same as a basis for reimbursement.

"In Mobile County there is not one County system for the rural schools and separate city school systems for the several municipalities in the County; but one school system operated by the Board of School Commissioners of Mobile County for all the inhabitants of the county. In this system there are ninety three schools, each of which must be visited from time to time by the Superintendent. From the County's northernmost school; at Calvert, on the Washington County line; to its Southernmost school on Dauphin Island; the distance is just over seventy miles. The superintendent's office (in the Barton Building in the City of Mobile) is just about midway between the Calvert and Dauphin Island Schools. From Mobile, on the Eastern edge of the County, to the Wilmer and Tanner-Williams schools in the western part of the County, is twenty miles. This number of schools over this wide-flung area, necessitates much automobile travel by the Superintendent.

"As a result of what is written just above, the accounting and the corresponding bookkeeping work proved vexatious and burdensome, and; at a regular meeting of the Board held on September 25, 1963; the Board, by appropriate resolution, changed the Superintendent's travel allowance, from the method hereinbefore stated, to a flat \$1200.00 a year.

"It was indicated, to the Treasurer-Comptroller of the Board, that the office of the Examiner of Accounts was inclined to think such change contrary to law and would be disallowed by the Examiner.

It was further indicated that this thought was based on an opinion of the Attorney General.

"Subsequently there was furnished to the School Board a copy of an opinion (under date August 20, 1963, given to Superintendent R. H. Vickery of the Monroe County Schools) from your office, the opinion being rendered in your name by Assistant Attorney General Madison.

"In this situation, the Mobile County Board sought of its Attorney his opinion as to whether its travel-allowance change in September, 1963, as heretofore set out, was a valid change or an invalid attempted change. The Board's Attorney advised the Board that in his opinion their action was valid, for the reason that the legal situation which underlay Mr. Madison's sound opinion to Superintendent Vickery, does not exist with reference to the Superintendent in Mobile County.

"There are set out below the pertinent Constitutional and Statutory provisions which constitute the legal framework within which must be considered the question indicated and which will be specifically propounded in this letter later on.

#### **"Pertinent Constitutional and Statutory Provisions**

"The Constitutional provisions which may be thought pertinent are Sections 68 and 281 of the Constitution of Alabama of 1901, and Amendment CXII to that Constitution. Sections 68 and 281 are set out below in full.

"**Section 68.** The Legislature shall have no power to grant, or to authorize or require any county or municipal authority to grant, nor shall any county or municipal authority have power to grant, any extra compensation, fee or allowance to any public officer, servant or employee, agent or contractor, after service shall have been rendered or contract made; nor to increase or decrease the fees and compensation of such officers, during their terms of office; nor shall any officer of the State bind the State to the payment of any sum of money, but by authority of law; provided this section shall not apply to allowances made by commissioners; court or boards of revenue to county officers for ex-officio services, nor prevent the Legislature from increasing or diminishing at any time the allowance to sheriffs or other officers for feeding, transferring or guarding prisoners." (emphasis supplied)

"**Section 281.** The salary, fees or compensation of any officer holding any civil office of profit under this State or any county or municipality thereof, shall not be increased or diminished during

the term for which he shall have been elected or appointed.' (emphasis supplied)

"There is quoted below the pertinent portion of Amendment CXII.

"Any provisions of this Constitution or amendments thereto to the contrary notwithstanding, neither the legislature nor any county in the state shall by the imposition of new, different or additional duties or otherwise increase or authorize the increase of the salary, fees, or compensation of any officer of the state or any county of the state who is elected or appointed for a fixed term, during the term for which he is elected or appointed\*\*\*\*\*.' (emphasis supplied)

"Section 111 of Title 52 of the Code; as last amended by Act approved June 28, 1943 (Acts of Extra Session of 1943, p. 181); provides as here pertinent:

"In Counties in which the maximum salary of the County Superintendent of Education is not fixed by law, the County Superintendent of Education shall receive such **compensation, including salary and travel expenses**, as the County Board of Education shall direct.' (emphasis supplied)

"Section 270 of the Constitution of 1901 as amended by Amendment CXII, (proposed by the Legislature in 1956 by Act of the first Extra Session, p. 119; submitted to the people at the election on August 28, 1956; ratified by them, and proclaimed ratified on September 7, 1956) is quoted below.

"**Section 270.** The provision of this article and of any act of the legislature passed in pursuance thereof for educational purposes, shall apply to Mobile County only so far as to authorize and require the authorities designated by law to draw the portions of the funds to which said county shall be entitled for school purposes and to make reports to the superintendent of education as may be prescribed by law; and all special incomes and powers of taxation as now authorized by law for the benefit of public schools in said county shall remain undisturbed until otherwise provided by the legislature.'

"The 'this article' referred to, is Article XIV of the Constitution and deals with the general subject of 'Education.' The phrase 'any act of the legislature passed in pursuance thereof for educational purposes,' refers to any act passed pursuant to the Legislative scheme for educational purposes.

"This semi-autonomous situation of the school system of Mobile

County, has been before the **nisi-prius courts** in Mobile County and before the appellate courts in our state a number of times and the existence of this situation is thoroughly recognized. The most recent, most complete and most exhaustive treatment of this situation is contained in **Morgan vs. Board of School Commissioners of Mobile County**, 248 Alabama 22. Its history is traced in the opinion in that case. There are quoted below brief excerpts from that opinion clearly stating the thought of the court and the thought that has always been entertained by this Board:

“In 1875 the settled policy of taking Mobile County out from the general scheme of public school legislation was written into the Constitution of Alabama of 1875 as Section 11 of Article XII. The same Constitutional provision was carried forward without substantial change in the Constitution of 1901, where it forms Section 270 of Article XIV, the Article on Education, \*\*\*\*\*.” (Opinion, p. 24)

“There is then set out the text of Section 270 and an analysis of its provisions. That analysis points out that the Section contains

“‘a restriction that the Legislature may not apply to Mobile County any general public school legislation on the subjects embraced in Article XIV of the Constitution of 1901, except so far as it provides for Mobile County to get its share of the general public school funds, and to require the local school authorities to make such reports to the Superintendent of Education as may be prescribed by law.’ Opinion p. 26.

“Attention is drawn also to the statement of the court in **Covington vs. Thompson** 142 Alabama 98, quoted on p. 26 of the opinion in the **Morgan** case, following the matter quoted above in this letter.

“The same Legislature of 1854 which adopted the statute setting up the general school system in Alabama (which statute is referred to and quoted from in the opinion in the **Morgan** case at p. 24) also adopted a local act (Acts of 1853-54 p. 190) for Mobile County which supplanted the organizational act of 1826 and sundry local Mobile school Acts passed by Legislatures during the intervening years. By subsequent legislation substantially all of this local 1854 act was repealed or supplanted except Section 2 thereof. This remained law through the checkered Reconstruction era and down to the first Legislature which followed the adoption of the Constitution of 1875—the Legislature of 1875-76. By Act approved February 15, 1876 (Acts of 1875-76 p. 363) the Legislature set up what, with amendments from time to time, has been the fundamental law governing the conduct of the schools in Mobile County. The pertinent part of Section 4 of that Act, is set out below.

“Section 4. Be it further enacted That the said Mobile County School Commissioners **may** elect a President and Vice-President, who shall hold their offices respectively until the first Wednesday in September after the next election of School Commissioners. They **shall** also elect a County Superintendent of Education who shall hold his office for a period of four years, and they **may** elect or appoint such other officers and agents as they may from time to time deem expedient.” (Emphasis supplied)

“Acts of 1875-76, p. 363, 364.

“By Section 5 of the Act, as last amended by Act of September 19, 1947 (Local Acts of 1947, p. 262, 263,) the Board is given power to

“fix the compensation and bonds of its officers, agents and employees, and change the same at pleasure\*\*\*\*\*.”

“Various portions of the Act of 1876 have been amended from time to time but these amendments do not affect Section 4 nor the matter quoted from Section 5.

“Section 111 of Title 52, of the Code of 1940, (hereinbefore cited) is part of the Title which deals with education, and is the general body of school-law of the State, commonly referred to as the School Code. It is part of the general legislative scheme from which Mobile County is expressly exempted.

“It remains to consider whether the provisions of Amendment XCII to the Constitution alters this situation. Apparently it does not.

“(1) By its terms it is confined specifically to action taken by the Legislature or by any county of the State. It has no application to other public corporate bodies. Municipalities are not included. The Board of School Commissioners of Mobile County is by statute created a public body corporate, just as the City of Mobile. It seems apparent that what the amendment is aimed at is correcting an abuse that had grown up pursuant to the provision of that portion of Section 68 of the Constitution which declares that its provisions should not apply

“to allowances made by Commissioners’ Court or Boards of

Revenue to County officers for ex-officio services.”

“(2) But if, for discussion, the School Board be treated as a public body corporate within the intendment of the Amendment, still the

Amendment has no application to the situation here discussed. The language of the amendment forbids increase of the 'salary, fees, or compensation' of any officer of the State or any county. It is the Board's thought that 'compensation' as used in the stated phrase 'salary, fees, or compensation,' has a similar connotation to salary and fees—in no sense contemplates a reimbursement for out-of-pocket expenses incurred by a public officer in the performance of his duties. This seems reasonably clear from the consideration of the Constitutional and Statutory Provisions already quoted.

"Section 68 of the Constitution contains two thoughts:

"(a) denying the payment of money by a public body to an officer after service has been rendered; and

(b) forbidding increase or decrease of fees and compensation during the term of office of an officer within the purview of the Section. It seems significant that in treating of the first stated thought, the prohibitory language is 'any extra **compensation, fees, or allowance**' (Emphasis supplied); while in treating of the increase or decrease of payment during term of office, the prohibitory language is against increase or decrease the **fees and compensation** of such officers (emphasis supplied). There seems here a definite distinction, in the minds of the members of the Constitutional Convention, between compensation and fees on the one hand and allowances on the other hand.

"So in Section 281 the language again is 'salary, fees or compensation.'

"And that there was in the mind of the Legislature the same thought of distinction between salary, fees, and compensation on the one hand and payment of out-of-pocket expenses on the other hand; appears in Section 111 of Title 52 of the Code where the phrase is 'compensation, **including salary and travel expenses**.' (our emphasis) If the word 'compensation' included travel expenses as well as salary, the addition of the words 'including travel expenses' would have been unnecessary. As heretofore pointed out, this Section is not applicable to Mobile County; but it illustrates the entertainment by the Legislative mind, of the same thought of distinction that appeared as the intent of the framers of the Constitution.

#### "The Question

"Was the action, of the Board of School Commissioners of Mobile County, in changing the Superintendent's travel allowance to a

flat basis, as hereinbefore set out, a valid and lawful action?

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"The dollar-amount involved is not large. It is thought of the Board that the differential between the two methods of reimbursing the Superintendent for essential and legitimate travel is not the important issue before us. The big question is, 'how can the Superintendent be relieved of troublesome and vexatious accounting routines which hinder and delimit him in carrying out his major leadership responsibilities?' And at the election of the Superintendent next Spring for the term of four years to begin on September 1, 1964, the Board could, without question, make the flat travel allowance. If that dollar-amount were the sole matter for consideration, it might seem that the Board should not impose upon you the burden of considering this matter. But the raising of the question has implications that the Board deems important and touching which it is the Board's considered thought that your opinion should be sought. This thought is accentuated by the Board's respect for the thought of the Examiner of Public Accounts; and the Board's high respect and regard for the opinion of the Assistant Attorney General who wrote the Vickery letter heretofore referred to."

In my opinion, your question should be answered in the affirmative subject to the limitations set out below.

I do not think that Section 270 of the Constitution of Alabama 1901, as amended by Amendment 111 thereto has the effect of removing the Superintendent of the Mobile Public School System from the influence of Sections 69 and 281 or Amendment XCII(92) of the Constitution of Alabama 1901, which prohibit an increase or decrease in the compensation of certain officials (including county superintendents of education) during the term for which they were appointed or elected.—**Board of School Commissioners of Mobile County v. Hudgens**, Ala. , 151 So.2d 247; **Board of School Commissioners of Mobile County v. Hahn**, 246 Ala. 662, 22 So.2d 91; Cf. **McMurray v. Franklin County Board of Education**, 216 Ala. 144, 112 So. 644; **Petree v. McMurray**. 210 Ala. 639, 98 So. 782; Opinion to Honorable R. H. Vickery, Superintendent, Monroe County Schools, dated August 28, 1963 (Ms.).

However, a flat expense allowance, if based on a reimbursement to the officer concerned, for theretofore authorized and allowed expenses incurred by him in the performance of his official duties and bearing a reasonable and substantially accurate relationship to the actual expenses incurred, is not considered as an increase or decrease in compensation and may be given to said officer during his term.—Opinion to Honorable John T. Black, Solicitor, Ninth Judicial Circuit, dated October 11, 1963 (Ms.), and authorities cited therein.



If the flat \$1200.00 per annum allowance in question falls within the above rule, it would be authorized. If not, it may be so adjusted in amount as to conform thereto. In my opinion, the paying of the flat expense allowance in lieu of the actual expenses, heretofore authorized and allowed at the beginning of his term of office, in addition to a specified salary, all being total compensation under the local act in question, and being a reimbursement commensurate therewith money-wise, would be a valid and lawful action. This opinion is confined to the local act under consideration.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

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January 27, 1964

Hon. Walter S. Houseal  
Superintendent of Insurance  
Administrative Building

C A P I T O L

Insurance — Fair Trade Act.

Insurer, entering into contract to provide insurance coverage to contractor or subcontractor premiums being paid by company for whom work is done, is not violative of Act No. 608, 1957 Legislature (Insurance Fair Trades Act).

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion, bearing date of January 16, 1964, is as follows:

"A question has arisen in connection with the legality of an insurance plan being utilized by Scott Paper Company, Mobile, in cooperation with the Employers Mutual Liability Insurance Company, a company licensed in this State. The question is whether the insurer, by affording insurance to certain contractors or subcontractors performing work for Scott Paper Company, is guilty of coercion, intimidation or unreasonable restraint of trade as defined in our Fair Trades Act (No. 608, 1957 Legislature).

"Scott Paper Company is presently engaged in a very large expansion program in the Mobile area. Interested contractors and subcontractors are required to submit bids on two bases: (1) The bidder will obtain for himself workmen's compensation and employers liability and public liability insurance; and (2) The paper company will provide the required insurance at no cost to the contractor; i.e., on an ex-insurance basis. The contractor, under the latter plan, will reduce his contract price by the amount of the insurance cost. No other insurance coverages needed or desired by the contractor are affected by either event.

"Although bids must be submitted on both bases, it is our understanding that all contracts have been awarded and will probably continue to be awarded on the basis that Scott will purchase and provide the necessary workmen's compensation and public liability insurance. This insurance will be afforded by Employers Mutual Liability, the company selected by Scott. Since the insurer is a mutual company and Scott Paper is paying the premium, the policies will be endorsed as follows:

" 'It is agreed that the premium for this policy shall be paid by Scott Paper Company and that in consideration of such payment the named insured agrees that all returned premium and dividend, if any, shall be paid to Scott Paper Company.'

"Workmen's compensation insurance is to be underwritten on each individual risk and a separate policy issued by the carrier. Public liability coverage is to be provided on a master policy with necessary policy certificates being issued to each contractor or subcontractor covered under the master policy.

"As Scott Paper Company is selecting the carrier and is paying the premiums on insurance covering its construction projects, all contractors awarded Scott contracts will have to have their existing workmen's compensation and public liability policies endorsed to exclude coverage for work performed at Scott Paper.

"For your information, I am enclosing a copy of a contract specification which covers one phase of the construction program although we have been advised by officials of the paper company that identical specifications are included as a part of all bid proposals.

"Construction contracts awarded have been on an ex-insurance basis. The Mobile Independent Agents Association contends that Scott is requiring the contractors to agree to Scott's insurance plan as a condition of being awarded a construction contract and that Scott's insurance plan could not be effected without the agreement and cooperation of Employers Mutual Liability.

"The carrier contends the practice is common in the insurance industry, principally in the area where various protective liability policies are in accordance with contract specifications, purchased by one of the parties in behalf of others and that similar plans have been approved in other states. They also point to the net economies the purchaser may realize through this mass buying procedure and to the possibility of a dividend.

"I am requesting your opinion, based upon the above information, whether the insurance company's actions are in conflict with our Fair Trades Act, particularly as it applies to boycotts, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the insurance business. Your opinion is necessary to the immediate performance of the duties of my office.

"If you are in need of additional information, please let me know. An early reply will be appreciated as the insurance plan is presently being placed in effect."

The pertinent parts of Act No. 608, General and Local Acts 1957, page 865, are as follows:

"Section 2(1) 'Person' shall mean any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society, mutual aid, benefit or industrial companies or associations. and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters.

"Section 4. Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined.

"The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

"(4) Boycott, Coercion and Intimidation.—Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in the business of insurance."

While Act No. 608, *supra*, sets out those trade practices which a "person," as defined by Section 2(1), is forbidden to engage in, including boycott, coercion and intimidation as set out in Section 4 (4) the power of the superintendent as set out in Section 5 would not extend to restraining Scott Paper Company from purchasing insurance from Employers Mutual Liability Insurance Company.

The insuring of certain contractors and sub-contractors doing work on the expansion of Scott Paper Company, premiums to be paid by Scott Paper Company, does not appear to be a violation of Alabama Insurance laws by Employers Mutual Liability Insurance Company.

The provisions of Act No. 608, supra, and Public Law 15, 79th Congress, disclose no prohibition against the selling of insurance coverage as outlined in your request.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

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January 29, 1964

Hon. James E. Moore  
County Attorney  
City of Mobile  
Mobile, Alabama

Counties — Municipalities — Art Galleries.

There is no authority for a county to contribute to a municipality to aid the municipality in the construction of a public art gallery.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of January 2, 1964, is as follows:

**"Re: County Contribution to City Art Gallery.**

"The City of Mobile, in cooperation with a local civic organization, is constructing a Public Art Gallery which will be owned by the City and controlled and managed by a board which has been established by the City Commission to be known as the 'Mobile Art Gallery Board.' The City is acting in this project under the authority granted it by Title 37, Section 511, Code Recompiled 1958. The County has been asked to donate funds to this project.

"Section 511, above cited, clearly applies to cities and towns and gives

them ample authority to act as the City of Mobile is acting here. However, the reference contained in this Statute to counties is less clear. The Statute begins by referring only to 'each city and town . . .'; then speaks of 'each **such** city, town and county . . .' (emphasis supplied). Then, further on in the Statute, the reference is made to 'any such city or town . . .' this time leaving out the county. This sequence and combination of references as to whom the Legislature intended this Statute to refer gives the writer a strong impression that it was intended for cities and towns and not counties. In view of the uncertainty of it, however, I am requesting your opinion as to the authority of the County Commission to appropriate County funds to this project under the authority given in the above Statute.

"If you hold in the negative, then please advise whether the County could appropriate funds to the project under the provisions of Title 12, Chapter 18, Sections 224-226 of the Code. Finally, could such an appropriation be made under the terms of Title 12, Section 12(23) of the Code for the promotion and development of the cultural assets of the County?

"It is not intended by the above alternate inquiries to suggest that the County Commission desires to make any contribution to this project but only to point out the only possible authorities which the writer has found for such an appropriation and ask your opinion as to their application in this instance."

In my opinion, none of the code sections referred to in your request authorizes a county to contribute its funds to a municipal corporation for the purpose of aiding in the construction of a municipal public art gallery.

Title 37, Section 511, Code Recompiled 1958, cited by you, was originally Act No. 151, Extra Session of the Legislature 1963, page 168. The title of this Act reads as follows:

"To authorize cities, towns and counties of Alabama, of 6,000 population and over, to acquire sites for, and to acquire, establish and maintain Public Museums and Art Galleries, and to authorize the administration thereof by instrumentalities selected by the governing bodies of such cities, towns and counties."

It can thus be seen that the original act contained authority for a county to build public art galleries, but even in the original act I find no authority for a county or a city and town to construct **such** art gallery as a joint venture.

Aside from the above, an examination of the minutes of the Code Committee of 1940 reveals that the Code Committee, when the 1936

Act was codified as Title 37, Section 511, deleted the words "and counties" from the granting clause of the act. Under Title 1, Section 9, Code of Alabama 1940, this was a partial repeal of the original act.

Considering the minutes of the Code Committee and the Act as it now appears in the Code as Section 511, *supra*, it is my opinion that a county has no authority under the provisions thereof either to construct on its own or to contribute to a municipality to aid in the construction of an art gallery.

You next refer to Sections 224-226, Title 12, Code of Alabama 1940.

It is clear from these sections that they only authorize a county to acquire land to be used for the purposes set out in Section 225, and it plainly appears from Section 226 that if a county acquires land for the purposes set out in Section 225, such sites and the buildings thereon must remain a county project and be supervised and maintained by the board of trustees appointed by the county governing body. This situation does not exist as the problem presented by you.

In my opinion, the authority granted to counties under Title 12, Section 12, Subsection 22, Code of Alabama 1940, does not authorize a county to contribute its money for the purposes outlined in your request.

It appears therefrom that the contribution requested of the county is for the purpose of aiding it, the city, in the construction of a public Gallery. It, therefore, seems that the request for contribution is for the purpose of building the art gallery and not for the purpose of advertising the resources of a county or attracting manufacturing plants or factories or other industries of the county. In other words, the purposes set forth in Subsection 22, *supra*, are secondary to the construction of the art gallery. **Stone vs. State ex rel. Mobile Broadcasting Corporation**, 233 Ala. 426, 136 So. 727.

You are, therefore, advised that I find no authority for a county to contribute its funds to a municipal corporation for the purpose of aiding in the construction of a municipal public art gallery.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

February 4, 1964

Honorable H. Mallory Grubbs, Superintendent  
Cleburne County Board of Education  
Heflin, Alabama

Schools — Trustees

Each consolidated school is entitled to only three trustees appointed under the provisions of Title 52, Section 100, as amended, Code of Alabama 1940 (Recompiled 1958).

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of January 29, 1964 is as follows:

"We would appreciate an official opinion on the following:

"The County Board of Education of Cleburne County would like to appoint more than three trustees for each school. Due to the consolidation of schools we feel that we should have at least five trustees."

I am of the opinion each consolidated school is entitled to **only three trustees** appointed under the provisions of Title 52, Section 100, as amended, Code of Alabama 1940 (Recompiled 1958). Said section provides as follows:

"§ 100. **Qualification and selection of school trustees.**—The county board of education **shall appoint for every school in the county**, from a list of six discreet, competent, and reliable persons of mature years nominated by the patrons of the said schools, which list shall be kept on file by the board, **three persons** residing near the schoolhouse, and having the respect and confidence of the community, to serve for a term of four years as trustees of the school, to care for the property, to look after the general interest of the school, and to make to the county board of education, through the county superintendent of education, from time to time, report of the progress and needs of the school, and of the will of the people in regard to the school. The board of education shall fill all vacancies occurring in the office of trustee for the unexpired term from the list of nominees on file until the names on such list are exhausted. The term 'patrons' as used herein shall be construed to mean the parents and guardians of children in attendance at the school." [Emphasis supplied]

It will be noted that there is provision made for the appointment by the county board of education of **only three trustees** for every school in the county. This, in my judgment, means each school in the county.

In my opinion it was the legislative intention that, when by proper proceedings schools are consolidated, trustees for the new consolidated school shall be nominated by the patrons thereof and appointed by the county board of education; and that thereupon the authority and duties of the trustees of the several consolidating schools shall cease.—Biennial Report of the Attorney General, 1936-38, page 250; Quarterly Report of Attorney General, Volume 7, page 183; letter to Honorable Lester Wooten, Superintendent of Education, Morgan County, dated March 12, 1962.

The appointment of the trustees for the consolidated schools should be treated in the same manner as the appointment of trustees for new schools. The appointments for each school are made under Title 52, Section 100, *supra*. It is suggested that the county board of education call a meeting for the purpose of nominating trustees in accordance with the above statute, and notice of said meeting and of the time and place for holding the same should be freely circulated among the patrons of the new consolidated school. At said meeting six persons possessing the qualifications set forth in the said statute and residing near the schoolhouse should be nominated, and from this list **three** should be selected by the county board of education.—Letter to Honorable Woodrow Burke, Superintendent, Lawrence County Board of Education, dated May 2, 1961.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

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February 4, 1964

Hon. C. C. Porch, Chairman Pro-tem  
Comm. on Gov. & Finance  
Marshall County  
Guntersville, Alabama

Counties — Lease-sale Contracts — Bid Law — Marshall County.

Lease-sale Contracts do not come within the purview of Act No. 294, General Acts 1963, Regular Session (Ms.) in that bids must be advertised and received before lease-sale contracts may be entered into.



## Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of January 28, 1964, is as follows:

"The Commission on Government & Finance of Marshall Co. Ala. passed the following Resolution in regular session Jan. 20, 1964.

**"R E S O L U T I O N**

"Be it resolved by the Commission on Government & Finance of Marshall County, Alabama that this Commission by unanimous consent approves the rental of one Huber Motor Grader, Model 10D, Serial No. 1110273, equipped with Scarifier, Power Shift, Moldboard Cab & Heater, on a guaranteed rental basis of forty eight (48) months for Dist. #4 at \$621.58 per month, rental beginning Feb. 20, 1964, to be paid from funds appropriated to Dist. #4 for the fiscal year beginning Oct. 1, 1963, to be used by Dist. #4 and charged to said District. At any time the Commission sees fit to purchase Grader outright, all rents paid will be credited against the purchase price of \$23,450.00.

"On roll call the above resolution was adopted.

"1. We request an official opinion as to whether this violates, House Bill 802, Act No. 294, approved August 27, 1963, without asking

for rental or lease bids first on the above equipment.

"2. Also whether the District involved on such lease rental contract which could end in a purchase of such equipment, must have the full amount of money as cash in the Bank to its credit to pay in full for such lease rental sale agreement to take ownership of the equipment.

"3. Also whether the Commission on Gov. & Finance has the legal right to rent equipment of any or all types without first asking for bids on same.

"A copy of the lease sales contract is attached."

In answer to your first question, you are advised that the resolution unanimously adopted by the Commission on Government and Finance of your county does not violate Sections 11 and 12 of Act No. 294, Regular Session of the Legislature 1963 (Ms.).

Section 13 of said Act reads as follows:

"Section 13. After the effective date of this Act, no lease-sale contract, or contract for the rental or hire of any of the property mentioned in Sections 11 and 12 shall be made by the commission, or any member thereof, unless such contract be authorized by resolution or order of the commission made at a regular meeting of the commission, and entered on its minutes, which resolution or order shall be made only upon the favorable vote of all members of the commission. Such order or resolution of the commission must have been passed before the delivery of the property involved and otherwise shall be void. Any and all lease-sale contracts, or contracts for the rental or hire of any such property, not made in conformity with the foregoing provisions shall be null and void and it shall be unlawful for a warrant to issue in payment of the rental or hire or use thereof and the said County of Marshall shall not be liable in any form of action or suit whatsoever for the rental or hire or use of any such property except under and by virtue of an express contract made as provided in this section."

In order to fully understand the meaning of Section 13, *supra*, it must be determined just what a lease-sale contract is. It has been defined as a contract leasing certain property and granting the lessee an option to purchase the property therein described at the end of a certain time. It is merely a lease "with an option to purchase," and is not a contract of sale; an option is not and cannot be a sale, but is merely a right to exercise a privilege which might result in a binding contract of sale, but can only result in a binding contract of sale when the privilege is exercised. Words and Phrases, Vol. 24, Leases.

With this definition in mind, it can readily be seen that a lease-sale contract may or may not ripen into a purchase or a sale. Sections 11 and 12 of Act No. 294 are very specific in their provisions as to the procedure to be followed when the goods or equipment therein set out are **purchased** by the governing body of your county. These sections provide that any **purchase** in excess of \$300.00 must be made on the basis of competitive bidding. It is interesting to note that in Section 12 it is provided that purchase orders shall not be valid unless signed by at least four of the five man commission. It is further provided in Section 12 that neither the chairman nor the commission shall have authority to accept any bid unless at the time of accepting such bid the county has funds on hand sufficient to pay for the property purchased.

Section 13, in my opinion, is an exception to the competitive bid provisions contained in Sections 11 and 12. This for the reason that a rental or a lease-sale contract is not and cannot be a purchase contract or a sale until the option is exercised by the lessee within the period set forth in the contract.

It is provided in Section 13 that no lease-sale contract or rental contract may be entered into unless the contract is authorized by a resolution passed by a vote of all of the members of the commission. Had the Legislature intended that lease-sale contracts not be entered into until bids had been asked for and received, it would have been very easy for the Legislature to have provided so. This, it has not done. On the contrary, it is provided that no warrant shall issue in payment of the rental or hire or use of any property leased, rented or hired by the county except under and by virtue of an express contract made as provided in Section 13. Had the Legislature intended that the contract such as the one here considered be subject to the competitive bid provisions of the Act, it would have so stated in Section 13, and not provided, as hereinabove pointed out, that these contracts be made and entered into as provided in that section.

In the event the county determines to exercise the option granted in a lease-sale contract, then and in that event the provisions of Sections 11 and 12 should be followed.

My answer to your second question is in the negative.

I find no provision in the act providing that the entire amount of a lease-sale or rental contract be on hand in cash money before the contract is entered into.

For the reasons hereinabove set out, my answer to your third question is in the affirmative.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

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February 4, 1964

Honorable T. C. Almon  
Judge of Probate  
Morgan County  
Decatur, Alabama

Elections — Voters and Voters List — Boards of Registrars  
— Registration — Residence — Constitutional Amendments.

No person is entitled to register as an elector until he shall have resided in the State at least one year, in the

County six months, and in the precinct or ward three months regardless of when the election at which he offers to vote is held.

Opinion by Assistant Attorney General Hall.

Dear Judge Almon:

I have your letter of January 28, 1964, which reads as follows:

"Section 32, Title 17, Code of Alabama of 1958, gives the qualification of those who are eligible to register in the State of Alabama to vote; however, they also have to meet the qualifications of Section 178, of the Constitution of 1901.

"Under the references given under Section 178 of the constitution of Alabama, among other things, there is this recital:

**"Residential qualifications necessary for registration refer to time of next election.**—Persons who will have at the time of the next general election subsequent to date of registration the residence qualifications required by this section are qualified to register although such persons may not possess said qualifications at the time of registration.'

"Would you give me the benefit of your opinion on the following questions?

"If a person meets the residential requirements in March of 1964, would he be entitled to register now while the Board of Registrars are in session?

"If a person meets the residential requirements, say in October of 1964, would he be entitled to register at any date before the General Election in November?"

Section 178 of the Alabama Constitution of 1901 was amended effective November 16, 1962, to read as follows:

"Section 178. To entitle a person to vote at any election by the people, he shall have resided in the state at least one year, in the county six months, and in the precinct or ward three months, **im-**

**mediately preceding the election at which he offers to vote, and he shall have been duly registered as an elector**, and shall have paid on or before the first day of February next preceding the date of the election at which he offers to vote, all poll taxes due from him for the two calendar years next preceding. Provided, that any elector who, within three months next preceding the date of the election at which he offers to vote, has removed from one precinct or ward to another precinct or ward in the same county, incorporated town, or city, shall have the right to vote in the precinct or ward from which he has so removed, if he would have been entitled to vote in such precinct or ward but for such removal." [See 1961 Cumulative Supplement to Vol. 1 (Pocket Part) Code of Alabama Recompiled 1958, p. 79.] [Underscoring\* supplied.]

You will note particularly that this Amendment says, as underlined above **"and he shall have been duly registered as an elector."**

This necessarily brings into consideration the provisions of Amendment XCI (91) to the Alabama Constitution of 1901, especially the first complete phrase, which reads "Sec. 181. The following persons, and no others, who if they are citizens of the United States over the age of twenty-one years and **have the qualifications as to residence prescribed in section 178 of this article**, shall be qualified to register as electors provided they shall not be disqualified under section 182 of this Constitution:" [Underscoring supplied.]

In view of these Amendments to the Constitution, the footnote to Section 178 of the Constitution quoted in your letter is no longer applicable.

Therefore, in my opinion, the answer to the questions posed in the last two paragraphs of your letter should be as follows:

No person is entitled to register as an elector until he shall have resided in the State at least one year, in the County six months, and in the precinct or ward three months regardless of when the election at which he offers to vote is held.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

February 5, 1964

Hon. Lee M. Otts  
Solicitor, Escambia County  
Courthouse  
Brewton, Alabama

State Dept. of Public Safety — Driver Licenses — Courts  
— Appeals

1. A conviction under Title 36, Sections 2 or 3, Code of Alabama 1940, as Recompiled 1958, and a sentence, which includes a prohibition against driving a motor vehicle for a stated period of time would be suspended pending an appeal to the Circuit Court.

2. Should the Court have required the surrender to it of the defendant's driver license, and if the Court has not had time to forward it to the State Director of Public Safety, it should, upon the perfection of an appeal to the circuit court, return the driver license to the defendant.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion, bearing date of January 17, 1964, is as follows:

"I would appreciate your furnishing me with an opinion in answer to the following question:

"In a case before the Inferior Court of Escambia County, Alabama where the Defendant has been charged, tried and convicted of the offense of driving while intoxicated or reckless driving and in addition to the fine the Court revokes or suspends the Defendant's driving privileges for a period of six (6) months or twelve (12) months and the Defendant perfects his appeal to the Circuit Court of the County, does this appeal have the effect of suspending the Court's order revoking or suspending the Defendant's driving privileges and must the Court, upon request, return the Defendant's drivers license to him?"

Title 36, Section 2, Code of Alabama 1940, as Recompiled 1958, provides, in pertinent part, as follows:

"As additional punishment, the court trying the cause shall have

authority to prohibit the person so convicted from driving any motor vehicle upon the highways of this state for a period not to exceed one year."

Title 36, Section 3, Code of Alabama 1940, as Recompiled 1958, provides, in pertinent part, as follows:

"\* \* \* and the court shall prohibit the person so convicted from driving a motor vehicle on the public highways of this state for a period of not exceeding six months."

The entering of an order prohibiting a person from driving a motor vehicle upon the highways of the State of Alabama is additional punishment and has nothing to do really with whether a person has driver's license or not. The driver license is but a symbol of the privilege to drive a motor vehicle granted to a person by the Legislature of Alabama, so long as he has certain qualifications and meets the requirements for keeping the privilege. This privilege is given and taken away by the Director of Public Safety of Alabama. It is not considered as punishment, but as a protection to the driving public by removing an unsafe driver from the highways. See *State v. Savage*, 34 Ala. App. 633, 42 So. 2d 695.

The Court, in prohibiting a person from driving under Sections 2 and 3, *supra*, is giving additional punishment for the offense committed. In this instance a person may be prohibited from driving a motor vehicle whether he had a driver license or not. The license itself does not enter the picture.

Also, the punishment for violating the order of the court is by way of contempt.

Upon appeal of a conviction under either Section 2, or Section 3, *supra*, to the Circuit Court, the judgment and sentence of the Inferior Court of Escambia County, Alabama would be suspended, pending the appeal in the Circuit Court. Therefore, the sentence of the Inferior Court, prohibiting a person from driving a motor vehicle for such a time as may fall within that allowed by statute would also be suspended, pending the appeal.

The reason, of course, being that the order prohibiting the person from driving is part and parcel of the sentence of the court.

Therefore, it is my opinion that the sentence of the Inferior Court of Escambia County, Alabama prohibiting a person from driving a motor vehicle as a result of a conviction under either Title 36, Sections 2 or 3, Code of Alabama 1940, as Recompiled 1958, would be suspended pending an appeal to the Circuit Court.

It is noted from the request for an opinion that the court had required the surrender to it of the driver license of the defendant.

I assume that the surrender of the driver license was required pursuant to the provisions of Title 36, Section 68, Code of Alabama 1940, as Recompiled 1958, which provides in pertinent part, as follows:

“Whenever any person is convicted of any offense for which this article makes mandatory the revocation of the driver’s license of such person by the director of public safety, the court in which such conviction is had shall require the surrender to it of the driver’s license then held by the person so convicted and the court shall thereupon cause the same to be forwarded, together with a record of such conviction to the director of public safety.”

It will be noted that the above cited code provisions require the court, upon obtaining the driver license, to forward same to the Director of Public Safety of the State of Alabama. Apparently this had not been done by the court. I do not believe that the court has the prerogative of obtaining the driver license of a defendant for any reason other than to forward same to the Director of Public Safety of the State of Alabama, along with a record of the conviction.

Under the provisions of Title 36, Section 3, *supra*, it is made a mandatory duty on the part of the court on a second or subsequent conviction to prohibit the person from driving for a period of time up to six months; whereas the imposition of the additional punishment by way of the prohibition to drive a motor vehicle, under Section 2, *supra*, on a first offense, is not mandatory, but purely discretionary.

I might also point out it is necessary to allege, in the complaint, a prior conviction of reckless driving in order to introduce proof of such or to add the additional punishment. **Robinson v. State**, 36 Ala. App. 676, 62 So. 2d 608.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General



February 6, 1964

Honorable J. D. Moody, Chairman  
Board of Revenue  
Cullman County Commission  
Cullman, Alabama

Counties — Industrial Development — Schools — Cullman  
County

Act No. 66, approved April 23, 1963, Special Session 1963 (Ms.), relating to an additional sales and use tax in Cullman County and providing for the use of a part of the proceeds thereof by the county to be used exclusively for the purpose of promoting industrial development authorizes said funds to be used by the county for the purpose of contributing a part of said funds to the costs of the purchase of necessary lands on which to build a trade school established under the provisions of Act No. 93, approved May 3, 1963, Second Special Session 1963 (Ms.).

Opinion by Attorney General Flowers.

Dear Sir:

Your request for an official opinion bearing date of January 28, 1964 is, as follows:

"A trade school is to be constructed in Cullman County under the provisions of Act No. 93 of the 1963 Legislature, provided Cullman County and the City of Cullman purchase the necessary land on which to build the school.

"The future industrial development and expansion of Cullman County depends (sic) on whether our men and women can obtain training in operating machinery and other skills which are required by industries which will consider establishing plants in Cullman. At present there is no place in Cullman County to obtain this training.

"Under the provisions of Act No. 66 of the 1963 Legislature, Cullman County is to receive \$12,500 annually from the proceeds of the county sales tax to be used to promote industrial development.

"Please advise us whether this money can be used to pay the County's share of the cost of purchasing land for construction of a trade school to train our men and women in the use of machinery?"

I am of the opinion that your inquiry should be answered in the affirmative.

Act No. 66, approved April 23, 1963, Second Special Session 1963 (Ms.), relates to an additional sales and use tax in Cullman County and provision for the ascertaining, collection, payment, distribution, and use of the proceeds thereof.

In regard to the distribution of said tax, Section 7 of said Act provides in pertinent part as follows:

"... The net proceeds derived from the taxes levied by this Act shall be distributed as follows: The custodian of public school funds shall pay annually to the governing body of Cullman County and to the City of Cullman each the sum of \$12,500 which shall be payable at the rate of \$1,000 per month for eleven months and \$1,500 for the twelfth month. Funds payable to the county governing body shall be paid into the county general fund and funds payable to the City of Cullman shall be paid to the city treasurer. Such funds shall be kept separate and apart from other funds and shall be used exclusively for the purpose of promoting industrial development. Exclusive of the \$25,000 heretofore allocated to the county governing body of Cullman County and the City of Cullman to be used for the purpose of promoting industrial development, the remaining proceeds shall be divided equally between the board of education of Cullman County and the City of Cullman payable on a monthly basis. The board of education's share of the proceeds shall be used exclusively for educational purposes, including transportation, maintenance and upkeep of buildings and current expenses other than teachers' salaries. The city's share of the proceeds other than that specifically allocated by this Act for the promotion of industrial development shall be used for general municipal purposes."

The question presented by your inquiry is whether the phrase "for the purpose of promoting industrial development" as used above embraces the authority for the county to contribute a part of said fund to the costs of the purchase of necessary lands on which to build a trade school established under the provisions of Act No. 93, approved May 3, 1963, Second Special Session 1963 (Ms.). I think this is clearly contemplated within the meaning and intent of the act. The construction of a trade school would induce industry to locate in a section where trained personnel is available, thus promoting industrial development as provided in said act. It may be said that this could be true of any type of like educational project.

The provision in the act under consideration which lends emphasis and substantiates the theory that "promoting industrial development" would include an appropriation for trade school purposes is found in Section 8 of Act No. 93, *supra*, which provides as follows:

"Section 8. Determining Location of Trade Schools and Junior Colleges; Site Must Be Donated. The location of each new trade school or junior college for which the Authority provides funds shall be determined by the State Board of Education after consideration of the needs of industry for particular skills in the area under consideration, the convenience and accessibility of the location to labor markets and to potential students or applicants for training, and estimate of the number of potential students or applicants in the area, and such other factors as might demonstrate the existence of a need for a trade school or junior college in such area. No funds of the Authority shall be expended for the acquisition of sites or existing buildings, but nothing herein contained shall be construed to prohibit the use of funds of the Authority for the purpose of improving sites or reconstructing, altering or improving buildings donated to the Authority. No such trade school or junior college shall be built on a site other than one donated to the Authority."

This is a criteria upon which the State Board of Education may base its determination for the location of trade schools, and, in my judgment, does bring an expenditure by Cullman County of the funds under consideration for the purchasing of lands by the county on which trade school may be located within the project of promoting industrial development as used in Act No. 66, supra.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

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February 10, 1964

Hon. J. C. White  
Judge of Probate and Chairman of Board  
of Revenue and Control  
Chilton County  
Clanton, Alabama

Elections — Primaries — Election officials.

1. Under the provisions of Title 17, Section 349, Code of Alabama 1940, where more than one political party enters a primary it is not necessary to appoint a set of election officials for each party entering the primary. Only one set of election officials is required under the provisions of this section.

2. Only four election officials need to be appointed when two or more parties enter a primary where voting machines are used.

3. Paper ballots may not be used where voting machines are used except under circumstances considered in an opinion.

4. Where two parties enter a primary, it is not necessary to appoint additional election officials to handle absentee ballots. Title 17, Section 64(25), Code of Alabama 1940.

5. Opinion appearing in Quarterly Report of Attorney General, Vol. 74, page 62, is hereby overruled.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of January 30, 1964, is as follows:

"It appears that the Republicans in this county will hold a primary election at the same time the Democrats hold theirs on May 5, 1964, and Whereas, Section 105, Title 17, Article 7, 1958 Code of Alabama, provides for four election officials to be used with each voting machine.

"1. Would Section 105 of Title 17, Article 7 still be in effect requiring only four election officials for both Republicans and Democrats using the same voting machine at the same time and location?  
"2. Would it be in violation of any part of the above cited code to use paper ballots in conjunction with the voting machine at the same time and location?

"3. If number 2 question above is answered in the affirmative would additional election officials be required as specified in Section 64(25) Title 17 Code of Alabama?"

Before proceeding to a categorical answer to your questions, it is necessary that I answer the question as to whether or not, under existing statutes, it is necessary that two sets of election officials be appointed where the Democratic Party and the Republican Party have elections to come under the provisions of the primary law and each have candidates in the primary.

My answer to this question is in the negative.

Election officials who conduct primary elections are named under

the provisions of Title 17, Section 349, Code of Alabama 1940. This section reads in part as follows:

"§ 349. Election officers named; oath of.—Each candidate for nomination may at least twenty-five days before the primary, present to the county executive committee of his party a list of election officers desired by him for any one or more of the districts, wards or precincts; and his county committee shall, so far as practicable, make up, from the list so presented to it, a list of names of election officers, six in number, for each district, ward or precinct, which it will nominate to the appointing board of the county for appointment as officers to conduct the primary election and the county committee shall present the list so made up by it to the appointing board of the county, which appoints the election officers to conduct elections for state and county officers in November, or at any other lawful time, which appointing board from the list so presented to it by the county committee shall if there be on said list the names of sufficient persons who are legally eligible select and appoint the officers to conduct the primary election, **observing the above rule as to representation** wherever more than one party enters the primary and in the latter case if a county committee has not given a sufficient number of names for a box, then the appointing board shall supply the deficiency from electors of that party. . . ." (Emphasis supplied.)

The provisions of this section are not entirely clear and I must, therefore, to the best of my ability, arrive at the legislative intent in regard thereto.

In my opinion, when the whole section is analyzed, I do not believe it requires the appointment of more than one set of election officials to conduct a primary election. Had it been the intention on the part of the Legislature to provide two or more sets of election officers at each box, there would be no room for the phrase "**observing the above rule as to representation.**" I believe "rule as to representation" applies to representation among the election officials instead of calling for a different set of election officers for each party which enters the primary. If this were required, then the case could arise where there would have to be a different set of officers for the Democratic Party, the Republican Party, the Independent Party, the Labor Party, etc., ad infinitum, with numerous sets of poll lists for the use of each set of election officials. A situation could arise where there would be more election officials in some voting places than voters. I do not believe the Legislature intended to create a situation such as this.

Section 350 of Title 17, Code of Alabama 1940, lends support to my interpretation placed on Section 349. This section reads, in part, as follows:

"§ 350. Official ballots and election stationery.—Separate official ballots and other election stationery and supplies for each political party shall be printed and furnished for use at each election district or precinct, and shall be of a different color for each of the political parties participating in such primary election. All ballots for the same political party shall be alike, except as herein otherwise provided, printed in plain type, and upon paper so thick that the printing cannot be distinguished from the back. Across the top of the ballot shall be printed the party's emblem, if any, and the words, 'Official Primary Election Ballot.' Beneath this heading shall be printed the year in which said election is held and the words 'Democratic Party' or 'Republican Party' or other party designation. . . ."

I do not believe the Legislature would have required the ballots of the different parties in a primary to be printed on different color paper, had it intended for a set of election officials to be appointed for each party. This requirement was placed in the section so that the one set of election officials can readily and without confusion give to the members of each party the ballot to which he is entitled. Had the Legislature intended that two or more sets of election officials be appointed, there would have been no necessity to require the ballots to be printed on different color paper; the requirement that each ballot merely contain the party named and emblem would have sufficed.

Section 351 of Title 17, Code of Alabama 1940, lends further support to the conclusion herein reached. This section reads as follows:

"§ 351. Separate ballot boxes for each party.—Where more than one political party has entered such primary it shall be the duty of the sheriff to furnish to the election officers of each voting place separate ballot boxes for each party participating in such primary. Said boxes shall be distinctly marked and the ballots of electors of each party shall be deposited in the box assigned to and designated for that party. The returns, certificates, official list of voters, ballots, tally sheets, affidavits as to challenged voters; after the canvass of the votes, shall be deposited in the ballot box of the party to which they relate."

Had it been the legislative intent that more than one set of election officials be appointed to conduct a primary election where more than one party enters the primary, then it would have been very easy for the Legislature, when this statute was enacted, to have required that the election officials of each party deposit in the ballot box furnished for that party, the ballots cast by the members of the party. This the Legislature did not do. On the contrary, it merely required that the ballots of each party be deposited by the one set of election officials in the ballot box assigned and designated for that party.

Title 17, Section 97, Code of Alabama 1940, which section sets out the requirements for voting machines also lends support to the conclusion herein reached. Subsections (e) and (i) of this section provides that voting machines used in this State must be so construed that it shall preclude each voter from voting for any candidate for whom he is not entitled to vote and shall have voting devices for separate candidates so that at any primary election one or more adjacent rows or columns may be assigned to candidates of a party. This device on voting machines is commonly referred to as the primary lever.

Believing that I have arrived at the correct legislative intent in regard to the question here considered, you are advised that in the forthcoming primary in your county where the Republican Party and the Democratic Party have elected to participate therein, it is only necessary that the appointing board of your county appoint one set of election officials to conduct this primary. This for the further reason that only one primary election is conducted with two or more political parties participating therein. Title 17, Section 346, Code of Alabama 1940.

Specifically answering your questions, you are advised that it is only necessary that four election officials be appointed under the provisions of Title 17, Section 105, Code of Alabama 1940, in counties using voting machines in which both the Republicans and Democrats have elected to enter the primary.

In answer to your second question, in those counties using voting machines it is not permissible to use paper ballots in conjunction with the voting machines except in the so-called nine-eight plan of electing congressmen and in those elections where only candidates for federal offices are running.

In answer to your third question, it is not necessary to appoint additional election officials where two or more parties enter a primary, as the election officials provided by Section 64(25), Code of Alabama 1940, may handle all absentee ballots cast in said election.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

February 12, 1964

Honorable Carl E. Sellers  
Judge of Probate  
Houston County Court House  
Dothan, Alabama

Licenses — Automobile Dealers — Auctioneers

1. Automobile dealers who come from other counties or from without the state and who are engaged in Houston County only in purchasing and selling automobiles at auctions conducted by an independent auctioneers, who maintains a place of business for such purpose in the county, are not liable for the automobile dealer's license levied under Title 51, Section 462, Code of Alabama Recompiled 1958.

2. An auctioneer whose activities are limited in the county to selling at auction at his own place of business automobiles which are owned by automobile dealers or other persons, and has no inventories of his own, would be liable for the Auctioneer's License under Title 51, Section 463(b), Code of Alabama Recompiled 1958, but would not be due to pay the Automobile Dealer's License under Title 51, Section 462, *supra*.

3. An automobile auctioneer whose activities also include the purchasing and selling of automobiles in his own behalf, whether at auction or not, in addition to auctioning automobiles for others, would be liable for the Automobile Dealer's License under Section 462 of Title 51, *supra*, notwithstanding the fact that he has purchased the Auctioneer's License under Section 463(b), *supra*.

Opinion by Assistant Attorney General Burton

Dear Sir:

Your request for an official opinion bearing date of January 27, 1964, is as follows:

"I would like to have your official opinion concerning the application of the automobile dealer's license under Title 51, Section 462, Code of 1940, and the automobile dealer's auction license levied under Section 463(b) of the same Code Title, under the circumstances which are herein below enumerated.



"There is an automobile auctioneer who has a place of business in this county where he auctions automobiles and other motor vehicles to and for automobile dealers only. This gentleman has paid the license under Section 463(b) of Title 51, but has not paid the automobile dealer's license under Section 462. The automobile dealers with whom he deals come from both Alabama and from other states. All of these dealers have procured an automobile dealer's license for their place of business in another county in Alabama or in another state, where they come from without the state. None of these people have ever paid the automobile dealer's license under Section 462 in Houston County, Alabama, where the auctioneer's place of business is located.

"Under these facts I would like to have your official opinion as to the following questions:

"1. Would the license which has been procured under Section 463(b) by the auctioneer for his place of business located in Dothan, Houston County, Alabama, be sufficient, or would each of these automobile dealers who come to the auction both from locations within and without the State, have to procure the automobile dealer's license under Section 462, which provides that each person dealing in, selling, or purchasing for resale, automobiles and other motor vehicles is required to pay the license thereunder?

"2. Is the auctioneer who is purchasing cars from these dealers and selling cars to these dealers in connection with conducting the auction at his place of business in Dothan also required to procure an automobile dealer's license under Section 462?

"Your immediate attention to this matter will be greatly appreciated, in order that we might properly proceed in these cases."

From what you state it appears that the dealers to whom you refer do nothing in Houston County but buy and sell cars at the auctions which are conducted by the independent auctioneer, who holds them at his own place of business located in Dothan.

My answer to your first question then is that none of these dealers would be liable under these facts for the automobile dealer's license in Houston County, Alabama.

Under Title 51, Section 462, Code of Alabama Recompiled 1958, this license is levied in material part, as follows:

"Each person dealing in, selling or purchasing for resale, automobiles, trucks, . . ."

While the statute does make the "dealing in, selling or purchasing for resale," of automobiles the subject of the tax, it clearly appears that it seeks to do so when the dealer does these things in the conventional way and in line with what is generally accepted as engaging in the automobile business. The buying and selling of automobiles as between dealers and through the medium of an independent auctioneer, whose auctions are conducted at his own place of business, does not appear to be the privilege or thing at which the license is directed.

Such a conclusion seems to be in full keeping with the established rule of construction, that a literal interpretation which would defeat the purpose of a statute, will not be adopted if any other reasonable construction can be given. **Thompson v. State**, 20 Ala. 54; **Town of Grayville v. Johnson**, 33 Ala. App. 479, 34 So. 2d 708, Quarterly Report of Attorney General, Volumes 24 and 11, pages 146 and 80, respectively.

My answer to your second question is that the auctioneer would not be liable for the license under Section 462, supra, if his activities are limited to merely conducting an auction where he sells automobiles which are owned by dealers or other persons, and has no inventories of his own. However, if the auctioneer in addition to conducting such auctions also is engaged in purchasing and reselling automobiles in his own behalf, whether he sells such motor vehicles through the auction or not, he would be engaged in the automobile business as is contemplated by Section 462 of Title 51, and would be due to pay the automobile dealer's license thereunder, in addition to the Auctioneer's License under Section 463(b) of Title 51, supra, as a separate license is required for each of such businesses. Title 51, Sections 838 and 839, Code of Alabama Recompiled 1958; **Pate v. State**, 243 Ala. 44, 8 So.2d 516; and **Brown Plumbing, etc. Co. v. McDowell**, 240 Ala. 485, 200 So. 104.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

February 12, 1964

Hon. Albert J. Lingo  
Director, Dept. of Public Safety  
711 High Street  
Montgomery, Alabama

State Dept. of Public Safety — Fees — Arrests

1. An arrest fee may be charged and collected by State Highway Patrolmen for each separate and distinct offense committed by a person against the State's traffic laws.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion bearing date of January 8, 1964, is as follows:

"I would like to have your opinion as to whether or not a Court should charge a separate arrest fee for each charge against a defendant when more than one arrest ticket is written at the same time. For example, a Trooper might arrest a subject for Driving While Intoxicated and No Drivers License at the same time. Should the Court charge two \$5.00 arrest fees or only one?

"In some areas of the State we have Courts that only charge one arrest fee regardless of the number of arrests made.

"Your opinion as to this will be appreciated."

In my opinion you may collect an arrest fee for each separate and distinct charge made against a person for an offense against the State's traffic laws.

In an opinion of this office found in Volume 6, Quarterly Report of Attorney General, page 163, it was held that a sheriff was entitled to his arrest fee in each case, no matter how many offenses had been committed.

I am of the opinion the same conclusion would be reached for State Highway Patrolmen as it was for sheriffs.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

February 13, 1964

Honorable Presley Davis  
Sheriff, Pike County  
Troy, Alabama

Cost and Fees — Expenses — Sheriffs — Opinions Overruled,  
Modified and Distinguished.

1. For removing any prisoner from a county in which he is arrested to the county in which he is to be tried, the sheriff shall be entitled to a fee of eight dollars for each day he is engaged in such removal, together with his actual necessary traveling expenses.

2. Quarterly Report of Attorney General, Volume 112, page 15, and Quarterly Report of Attorney General, Volume 112, page 44, are hereby modified to conform with this opinion.

Opinion by Assistant Attorney General Webb.

Dear Mr. Davis:

I have received your letter of January 23, 1964 in which you request my official opinion as follows:

"Hon. John Graves, State Comptroller, returned a removal bill to me stating meals were not chargeable in a removal, quoting an opinion issued out of your office July 16, 1963 to Hon. Phillip Willingham, Chm. Board of Commissioners, Sumter County. Your opinion deals with Title 11, Sec. 100. In my opinion this has to do with removing prisoners where there is no jail, to another jail for safekeeping or a change of venue has been granted.

"The removal bill I sent in came under Title 15, Sec. 180, 181, 182 and 183. The prisoner was being returned to the jail in Pike County from Mobile County where he was apprehended for a crime of Burg. and Grand Larceny on a warrant issued out of Pike County. "I would like your opinion as to the actual expense of returning the prisoner to the jail in Pike County being chargeable against the State, including the necessary meals. I feel this is a proper charge against the state and is in no way connected with the opinion referred to in Paragraph 1."

The opinion referred to by you is found in Volume 112 of the Quarterly Report of the Attorney General, page 15, which is soon to be published. In this opinion, the question arose as to whether or not the allowance to the sheriff under the provisions of Title 11, Section

100, Code of Alabama 1940, as amended, for a guard was in the nature of a fee or an allowance. In this opinion, this office held that the amount authorized for each guard engaged in such removal is in the nature of an allowance and not a fee. **Stone v. State**, 197 Ala. 293, 72 So. 536.

This office further held:

"The eight dollars allowed to the Sheriff and the guard have been treated by this office as being an allowance in the nature of a per diem. See Opinion of the Attorney General to Honorable W. A. Bratton, Sheriff, Sumter County, under date of May 31, 1963. You will note that under the provisions of Title 11, Section 100, the Sheriff receives mileage in the event that he travels in his private automobile or he receives travel expense in the event that some other type of conveyance is used. The per diem allowance of eight dollars for the Sheriff and for the guard takes the place of any other expense or items of expense incurred by the Sheriff and his Deputy, such as food and lodging. The allowance is, thus, a reimbursement on a flat basis and does not constitute a fee or salary for services rendered."

This statement was carried forward in a subsequent opinion to Honorable John Graves, State Comptroller, under date of August 14, 1963, now reported in Quarterly Report of Attorney General, Volume 112, page 44, soon to be published. The statement was immaterial to the holding in both opinions and was based on an erroneous extension of the ruling by the Supreme Court of Alabama in **Stone v. State**, supra. In this case, the court held that the guard allowance noted under Title 11, Section 100, was in the nature of an allowance and not a fee or a salary such as would be restricted under the provisions of Section 68, Constitution of Alabama 1901. The case, however, did not pertain to the amount authorized the sheriff for his duties and, in my opinion, the statement made in the two previous opinions quoted above, insofar as it pertains to this allowance taking the place of any other expense or items of expense incurred by the sheriff, such as food and lodging, was in error.

As to your specific question, removal bills arising under the provisions of Title 15, Sections 180, 181, 182 and 183, Code of Alabama 1940, as amended, are paid under the provisions of Title 11, Section 100, supra, the last paragraph of which reads, in pertinent part, as follows:

"For removing any prisoner upon a change of venue granted in his case, or who is arrested on a warrant issued by a justice of the peace, or on an indictment, and confined in a county other than that in which he is triable or arrested for contempt, or as a defaulting witness, eight dollars for himself or his deputy acting in his stead, and eight dollars for each guard for each day they are respectively engaged in such removal, **together with the actual**

**necessary traveling expenses of himself or deputy, and guard or guards, and prisoner or prisoners**, while on the trip, by the nearest route usually traveled between the points from and to which such removal is made, (if the trip is made in the personal car of the sheriff, or his deputy or agent, he shall be allowed ten cents per mile in lieu of other transportation expenses) . . ." (Emphasis supplied.)

In my opinion, the eight dollars allowed to the sheriff for his duties in accomplishing such removal is not an allowance as is the amount allowed for a guard but is a fee for services rendered by the sheriff and, in addition to this fee, the sheriff, for accomplishing such removal, is entitled to his necessary **traveling** expenses provided, however, as noted, that in the event that he travels by his private automobile the sheriff shall be entitled to ten cents per mile in lieu of actual **transportation** expenses.

I am, therefore, of the opinion that you are entitled to the expenses for meals submitted in your removal bill.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

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February 18, 1964

Honorable Peter J. Palughi  
Legal Department, City of Mobile  
Post Office Box 841  
Mobile, Alabama

Attorneys — Municipalities.

1. A full time municipal attorney is engaged in the practice of law.
2. A full time municipal attorney must pay the State license levied against attorneys engaged in the practice of law.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, dated January 17, 1964, is as follows:

"As you may know I am presently employed full time by the City of Mobile as Assistant City Attorney much in the same way as attorneys hired full time by the State of Alabama. I have no private practice.

"There has been some question raised as to whether or not I am to pay to the State and County license fees to practice law. My position has been and is that I am not in the law business and I am employed full time by the City, a political subdivision of the State. This alone, I feel is reason enough that I should not be responsible for these license fees. The City does not pay license fees to the State for any other business that it conducts so why should it do so in legal matters. I feel these is another reason why I should not be required to pay these fees. I am not in any business but work for a municipal corporation. If I was practicing law presently or in a business of practicing law I would agree, but since I am not I feel that I do not owe this license to the County and State. Last year I paid the \$15.00 to remain a member of the Bar directly to the Alabama Bar Association.

"The question I would like to be resolved by the Attorney General is whether or not I am responsible or the City of Mobile is responsible for paying and purchasing State and County business licenses to practice law as an attorney."

Title 51, Section 460, Code of Alabama 1940, as amended by Act No. 156, Acts of Alabama 1959, page 682, provides that each attorney engaged in the practice of law shall pay an annual license of \$40.00 to the State, as amended, *supra*.

Therefore, the question presented by your request is whether you are engaged in the practice of law within the meaning of Section 460, as amended, *supra*.

A municipal attorney does not hold a municipal office. He has been called an employee of the municipality. **State ex rel. Glenn v. Wilkinson**, 220 Ala. 172, 124 So. 211. However, the relationship between a municipality and its attorney is that of client and attorney and not that of master and servant. Quarterly Report of Attorney General, Vol. 112, page 80.

Premises considered, I am of the opinion that you are required to pay the license imposed by Section 460, as amended, *supra*.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

February 19, 1964

Hon. Walter S. Houseal  
Superintendent of Insurance  
Administrative Building  
C A P I T O L

Insurance — Traveling Expenses — Examiners — Title 41,  
Section 154; Title 28, Section 47(9), Code of Alabama,  
Recompiled 1958.

Examiners of Insurance Companies may be reimbursed in  
accordance with provisions of Title 28, Section 47(9), Sub-  
section 13, Code of Alabama, Recompiled 1958.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion bearing date of January 28,  
1964, is as follows:

“Your official opinion is requested with respect to the authority of  
the Superintendent of Insurance pertaining to the following:

“Title 28, Section 54(1), **Code of Alabama**, 1940, provides for the  
payment of expenses incurred by the Department of Insurance or  
the employees thereof in the examination of insurance companies,  
mutual aid and fraternal benefit associations, reciprocal exchanges,  
or other insurance corporations to be paid from a special revolving  
fund in the State Treasury, which said fund is composed of fees  
and expenses received from said companies pursuant to Title 28,  
Section 47, **Code of Alabama**, 1940.

“Title 41, Section 154, **Code of Alabama**, 1940, provides, in part, as  
follows:

“‘The maximum amount allowable to a person traveling in the  
service of the State of Alabama or any of its agencies, institutions,  
boards, bureaus, or commissioners for expenses other than actual  
**expenses of traveling** shall be fixed by the Governor at not less  
than seven dollars per day nor more than nine dollars per day . . .’  
“Among the powers and duties of the Superintendent of Insurance  
as prescribed by Title 28, Section 47(9), (13), is to ‘examine, or  
cause to be examined all domestic and foreign insurance companies  
qualified in this state as required by law; and **set a reasonable per  
diem, subsistence and travel allowance for such examiners** or other  
persons designated by the Superintendent of Insurance for such  
purpose . . .’



"Inasmuch as the examiners of insurance companies licensed in the state are paid from the fund provided under Title 28, Section 54(1), and are not paid from the general appropriation fund, I would appreciate your opinion as to whether I have the authority to reimburse these examiners on a basis of actual traveling expenses rather than the per diem limitations prescribed by Title 41, Section 154."

It is the opinion of this office that those examiners of insurance companies licensed in the State may be reimbursed in accordance with the provisions of Title 28, Section 47(9), Subsection 13, Code of Alabama, Recompiled 1958.

"§ 47(9). Powers and duties of superintendent . . . (13) examined, or cause to be examined all domestic and foreign insurance companies, mutual aid, fraternal benefit associations, reciprocal exchanges, or other insurance corporations qualified in this state as required by law; and set a reasonable per diem, subsistence and travel allowance for such examiners or other persons designated by the superintendent of insurance for such purpose. All insurance companies, associations, societies, reciprocal exchanges or any other insurance concern examined under this section shall pay all expenses incurred in such examination; . . ."

Monies so collected are put into a special revolving fund for payment of these examiners under provisions of Title 28, Section 54(1), Code of Alabama, Recompiled 1958.

You do not have the authority to reimburse the above-mentioned examiners on the basis of actual travelling expenses. Their basis of reimbursement is the reasonable per diem, subsistence and travel allowance which you may set up pursuant to the provisions of Title 28, Section 47(9), Code of Alabama, Recompiled 1958. The latter is a matter of administrative procedure.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

February 27, 1964

Hon. J. Paul Meeks  
Judge of Probate  
Jefferson County  
Birmingham, Alabama

Notaries — Notary Public — Qualifications — Poll Tax.

A person who has not paid his poll tax is not a qualified elector within the meaning of State statutes and may not be appointed a notary public even though he may vote in Federal elections by virtue of Amendment 24 to the United States Constitution.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of February 21, 1964, is as follows:

"The appointment of a person as a notary public contemplates that the person so appointed is a qualified elector with the ability to cast a legal ballot at the next election. Payment of poll tax, of itself, does not make a person a legal voter. (Biennial Report of The Attorney General, 1926-28, pages 606 and 632)

"In view of the ratification of the Twenty-Fourth (24th) Amendment to the Constitution of the United States, providing that one who is otherwise qualified to vote may not be denied his ballot in a federal election because of the non-payment of a poll tax, is a person who is qualified to cast a federal ballot but not a state ballot qualified for the office of notary public?

"Your attention to this matter will be greatly appreciated."  
My answer to your inquiry is in the negative.

This office has heretofore held that a person must be a qualified elector before he can be appointed a notary public in the State of Alabama. Quarterly Report of Attorney General, Vol. 48, page 118.

A definition of a qualified elector within the meaning of the statutes of this State is found in Title 17, Section 38, Code of Alabama 1940, which reads in pertinent part as follows:

"§ 38. List of names registered by precincts, districts and other

subdivisions to be published. The judge of probate shall, from the registered list heretofore and hereafter returned to his office, including those registered prior to January 1, 1902, and excluding those names stricken therefrom as shown by the list returned to him under the provisions of section 54 of this title, make correct alphabetical lists of all electors registered by precincts or by districts or other subdivisions thereof where any precinct has been divided or subdivided, if not within a city or incorporated town, and by wards or other subdivisions, if within a city or incorporated town, which list shall be certified by him officially to be a full and correct list of the registered electors, and no others, except for purposes of information, for each precinct, each district, each ward or each other subdivisions, respectively, as the same appears from the returns of the registrars on file in this office. The judge of probate shall, after the first day of February each year, compare such official lists of registered electors with the poll tax lists which have been furnished him by the tax collector, and shall ascertain from such comparison the names of such persons on the official list of registered electors who have failed to pay any poll tax which is legally due, and by such comparison and other available information, said judge of probate shall make correct alphabetical lists of all the qualified electors registered by precincts, and by districts or other subdivisions where the precinct has been divided or subdivided, if not within a city or incorporated town, and by wards or other subdivisions, if within a city or incorporated town, and who have paid all poll tax due. Such lists so made up shall be published by him in some newspaper with a general circulation in the county on or before the fifteenth day of April, 1940, and each two years thereafter, and together with said lists there shall also be published a certificate that said lists constitute the correct list of all qualified electors who will be entitled to vote in any election held in said county from the time of such publication until the first day of May, of the next succeeding year, and also a notice that any voter duly registered whose name has been inadvertently or through mistake omitted therefrom and who has paid all taxes due and who is legally entitled to vote shall have ten days from said publication to have his or her name entered upon said lists of qualified voters. . . .”

It plainly appears from the above that in order to be a qualified elector of the State of Alabama a person must pay all poll tax that is required by the statutes of this state.

Amendment 24 to the Constitution of the United States is merely a prohibition against denying the right of a citizen of the United States to vote in any primary or other election for president, vice-president, or for electors for president, vice-president, or senator or representatives in congress, for the non-payment of State poll tax. This amendment does not in any way attempt to define a qualified elector under the statutes of this State. It simply prohibits the State from

denying the right to vote for Federal officers to a person who has not paid State poll tax.

You are, therefore, advised that Amendment 24 to the Constitution of the United States does not in any way change the qualifications of notaries public in this State, one of which is that he must be a qualified elector under the statutes of Alabama. It appears from Section 38, *supra*, that a person who has not paid his poll tax is not a qualified elector within the meaning thereof.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

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February 27, 1964

Honorable Jack Giles, Director  
State Department of Industrial Relations  
State Industrial Building  
Montgomery 4, Alabama

Department of Industrial Relations — Board of Appeals.

Pursuant to Title 26, Section 8, Code of Alabama Recompiled 1958, the chairman and other members of the Board of Appeals of the Department of Industrial Relations are entitled to be compensated at the rate of \$35.00 per day for that portion of their time which they spend in traveling to attend official sessions of the Board of Appeals; the \$2200.00 maximum allowed to be paid to members of the Board of Appeals during a prescribed period of time may be expended in part upon a regular member of the Board of Appeals or in part upon any person who serves as that regular member's alternate or substitute in the performance of that member's official duties.

Opinion by Assistant Attorney General Mentz.

Dear Sir:

Your request for an official opinion bearing date of February 10, 1964 is as follows:

"The Federal auditors now auditing the books of the Division of

Employment Security of this Department have asked that I request of you an official opinion regarding the proper interpretation of provisions of Section 8, Title 26, Code of Alabama 1940 (Pocket Part), Recomplied 1958.

“Said Section 8 provides for the appointment of a Board of Appeals for the Department of Industrial Relations consisting of three members, a chairman and a representative of employers and a representative of employees. It provides further that:

“ ‘Members of the Board of Appeals shall receive no salary but shall be paid for each day or part thereof necessarily spent in the discharge of their official duties, including travel time, an amount to be agreed upon by the Director of Industrial Relations and the Governor, the same not to exceed \$35 per day; however, (1) the sum total to be paid to the chairman in the first six months of any calendar year shall not exceed \$2200 with a like maximum sum total of \$2200 in the last six months of any calendar year, plus actual travel allowance; the sum total to be paid to each of the other members of the Board in the first six months of any calendar year shall not exceed \$1500 with a like maximum sum total of \$1500 in the last six months of any calendar year, plus actual travel allowance . . . The Governor shall immediately, when it is shown to his satisfaction that a member of the Board of Appeals is disqualified for any reason or cannot attend a session of the Board of Appeals, appoint an alternate or alternates for the member or members so disqualified or absent.’

“I respectively request your opinion as to whether the above provisions of the law provide for the payment of \$35 to a member of the Board for a part of a day spent in the discharge of his official duties, including travel time. As an illustration, if a member leaves his home base at 5:30 p.m. one day for a session to be held in another city the following day, may this member be paid \$35 for the day his travel began; that is, for the period between 5:30 p.m. and midnight of the same day?

“Under the provision set out above for the appointment of alternates, if the chairman of the Board cannot and does not attend one of its meetings and an alternate is appointed who receives \$35 a day for his attendance, does the amount paid to the alternate apply toward the maximum \$2200 established by said section as the six months maximum compensation allowed the chairman? In like manner, if an alternate replaces an associate member of the Board, and receives pay for attending a session of the Board, is the amount paid to such aternate to be applied against the maximum amount payable to the associate he replaces during the six months period provided by the Act?”

It is my opinion that your first question, which is set out as the second paragraph of your letter, *supra*, should be answered in the affirmative.

In a prior opinion this office ruled that members of the Board of Appeals of the Department of Industrial Relations should be reimbursed for their actual traveling expenses in carrying out their duties as provided by Title 26, Section 8, Code of Alabama 1940, as amended by Act No. 410, General Acts of Alabama 1943, page 375, and Act No. 268, General Acts of Alabama 1949, page 391. Quarterly Report of the Attorney General, Volume 61, page 5.

If a member of the Board of Appeals of the Department of Industrial Relations is entitled to receive traveling expenses while discharging his official duties provided by Title 26, Section 8, Code of Alabama 1940, *supra*, then it logically follows that he also is entitled to receive the compensation allowed to him by law for that portion of his time spent in discharging his official duties. I am clear to the conclusion that the time spent by a member of the Board of Appeals in traveling to a session of the Board of Appeals must be considered time spent in the discharge of his official duties; unless the members of the Board are present at the Board's session, the Board of Appeals cannot function as Title 26, Section 8, Code of Alabama Recompiled 1958 intends that it should function.

It is my opinion that your second question, which is set out in the first sentence of the second paragraph of your letter, *supra*, should be answered in the affirmative.

As I interpret Title 26, Section 8, Code of Alabama Recompiled 1958, reference to the sum of \$35.00 per day allowed to the chairman of the Board of Appeals is intended to mean the position of chairman, rather than the individual who occupies or fills the position of chairman. Under this theory, then, if X, the actual chairman of the Board of Appeals, does not attend one of the meetings of the Board, but Y, X's alternate, does attend the meeting and serves as the Board's chairman, the \$35.00, which Y receives, is chargeable to the sum total of \$2200.00 maximum which the chairman of the Board of Appeals, be it X, Y, Z, or any other person who occupies the position of and serves as chairman of the Board of Appeals of the Department of Industrial Relations may receive under the provisions of Title 26, Section 8, Code of Alabama Recompiled 1958.

It is my opinion that your third question, which is set out as the concluding sentence of the third paragraph of your letter, *supra*, should be answered in the affirmative.

My reasoning in this instance is the same as that used in answering your second question, *supra*. The monetary allowance is intended for

the position rather than for the individual who occupies the position. Thus, the maximum allowable sum of \$2200.00 may be expended on one, two, or more individuals who actually serve in a particular position on the Board of Appeals.

The chairman and other members of the Board of Appeals of the Department of Industrial Relations are entitled to be compensated at the rate of \$35.00 per day for that portion of time spent in traveling to attend an official session of the Board of Appeals; the \$2200.00 maximum allowed to be paid to members of the Board of Appeals of the Department of Industrial Relations under Title 26, Section 8, Code of Alabama Recompiled 1958, may be paid to any regular member of the Board of Appeals or by any person who serves as an alternate or substitute for that regular member of the Board of Appeals.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

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February 28, 1964

Honorable O. D. Alsobrook  
Judge of Probate  
Chambers County Courthouse  
Lafayette, Alabama

Taxation — Filing Tax — Deeds — Mortgages

Where a purchase money mortgage is executed to a federal instrumentality, or is for any other reason exempt from payment of the mortgage privilege tax, the deed is subject to deed privilege tax based upon the full value of the property conveyed.

Opinion by Assistant Attorney General Loeb.

Dear Judge Alsobrook:

Your request for an official opinion bearing date of December 13, 1963, is as follows:

"I would like for you to furnish me an opinion based on Alabama law regarding the collection of deed tax in the following situation: 'A' deeds a parcel of property to 'B'. 'B' contemporaneously there-

with, executes a mortgage to 'C' and the proceeds of such mortgage are used to apply on the purchase price of said property. The mortgage which is executed to 'C' is exempt by law, from the mortgage tax. To what extent, if any, is this deed subject to the State Deed Tax?"

In addition to the information contained above in your written request, you have orally stated that the reason the mortgage is exempt by law is because such mortgage was executed to a federal instrumentality.

In an official opinion of this office contained in Quarterly Report of the Attorney General, Volume 104, page 43, which was amplified and clarified by a second official opinion contained in Quarterly Report of the Attorney General, Volume 110, page 10, it was held that under similar circumstances the deed tax should be collected only on that value in excess of the amount of the mortgage. However, this conclusion was predicated upon the assumption that the mortgage tax on the purchase money mortgage either had already been paid or was to be paid at the time of recording both instruments. Section 618, as amended, Title 51, Code of Alabama 1940, specifically states:

"Provided that only the value in excess of any mortgages or vendors lien upon any property within this state **on which the mortgage tax has been paid**, shall be taxable under this section . . ." [Emphasis added]

As I understand your hypothetical question, you are assuming as a fact that the mortgage itself, either because it is executed to a federal instrumentality or for any other reason, is exempt from payment of mortgage privilege tax. This being the case, it is my opinion that you must collect full deed tax on the value of the property conveyed, since, under the language of the statute quoted above, one of the prerequisites for the partial exemption of the deed from tax is that the mortgage tax shall have been paid. If such tax is not paid, then the full amount of deed tax would be due.

This conclusion is in line with other opinions of this office, which although not dealing with the identical situation here presented, are strongly analogous. Such opinions have held that exemption is not tantamount to payment, and that where there is an assignment or other conveyance by a mortgagee upon which original mortgage tax was never paid, either because it was not recorded or was executed to a tax exempt instrumentality, a deed tax must be collected on the full value assigned or conveyed. See Quarterly Report of the Attorney General, Volume 59, page 73; Quarterly Report of the Attorney General, Volume 26, page 72; Quarterly Report of the Attorney General, Volume 17, pages 176 and 265; Quarterly Report of the Attorney General, Volume 15, page 229; Quarterly Report of the Attorney General, Volume 14, page 99; Biennial Report of the Attorney General 1936-38, page 729. These rulings have, of course, been modified by Section 619(3), Title 51, Code



of Alabama Recompiled 1958; however, the reasoning contained in the opinions is still valid, and, in fact, is strengthened by the language of Section 619(3), *supra*.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

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March 2, 1964

Hon. C. C. (Jack) Owen  
President  
Ala. Public Service Commission  
P. O. Box 991  
Montgomery 2, Alabama

Public Service Commission — State Dept. of Revenue —  
Licenses — Municipalities

An ordinance levying a license tax on the delivery of merchandise into a municipality from a point outside said municipality, is valid and may be enforced against a person making deliveries of merchandise into said municipality as an incident of a sale made outside the municipality; provided, however, the person making the sale and delivery does not come within the provisions of the Alabama Motor Carrier Act.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion bearing date of January 21, 1964, is as follows:

"A serious question has been presented to us on several occasions lately which I believe should be answered by an official opinion of your office.

"Section 301 (1), e.s., Title 48, Code of Alabama 1940, as amended, provides for the regulation of motor carriers. The term motor carrier as defined as being a 'for hire' motor carrier and sub-section (3), Paragraph A, under Section 301 (2), specifically exempts motor vehicles while used in the transportation of property when the owner

of the vehicle is regularly and legally engaged in the business of selling such property.

"Section 301 (31) undertakes to set forth the rights of municipalities in assessing privilege licenses for motor carriers and in effect it states that a municipality may tax a motor carrier doing business in that municipality by 'receiving' freight for points between that municipality and other points in Alabama. The inference is that a municipality cannot tax a motor carrier 'delivering' freight only.

"The question that has arisen is whether or not a person operating an exempt operation under the exemption referred to above may be taxed by a municipality for 'delivering' property only in a municipality and not picking up any property for transportation to other points in Alabama.

"Since the operation may be said to be not a motor carried because of the exemption, it may be that Section 301 (31) is not the governing statute and that is my primary reason for submitting this question to you.

"Specifically, the question arises in connection with a furniture and appliance business which delivers property, which it has sold, by the use of its own vehicle in another municipality in this state, and the latter municipality is undertaking to assess a privilege license.

"I would deeply appreciate an official opinion on whether or not such a tax is proper."

Your request for an opinion from the office is based on the following facts:

"Specifically, the question arises in connection with a furniture and appliance business which delivers property, which it has sold, by the use of its own vehicle in another municipality in this state and the latter municipality is undertaking to assess a privilege license."

Then you ask the question:

"Whether or not a person operating an exempt operation under the exemption referred to above may be taxed by a municipality for 'delivering' property only in a municipality and not picking up any property for transportation to other points in Alabama."

In your request for the opinion, you point out to me Title 48, Section 301 (1), 301 (2) 3A, as well as 301 (31), Code of Alabama 1940, as Re-

compiled 1958, and then you ask the question of whether or not these sections of the Motor Carrier Act apply to the factual situation presented by your request, or is there some other law governing the said factual situation.

I am of the opinion that the business operation outlined by your request for an opinion, based on the facts therein enumerated, is an exempt operation. That is, the operator of the motor vehicle in question is exempt from the provisions of the Motor Carrier Act of Alabama. Title 48, Sec: 301 (2) 3A, supra. Consequently, Section 301 (31) of Title 48, supra, would have no application to the factual situation presented by your request.

Though the concern of the Public Service Commission, necessarily ends here, since you have requested further consideration, we now must refer to Title 37, Sec. 735, Code of Alabama 1940, as Recomplied 1958, which gives to the municipalities of Alabama the authority to tax a business operation such as the one referred to in your letter to me.

This office considered this law in an opinion to the Honorable Horace Norrell, Mayor, Town of Trussville, Trussville, Alabama, Quarterly Report of Attorney General, Volume 89, page 41, wherein an ordinance of the City of Trussville, requiring any person, firm, corporation or motor transportation company unloading, delivering, distributing or disposing of any goods, wares, merchandise or products in the City of Trussville, which were transported from a point outside the City of Trussville to a point inside the corporate limits of said city, was held valid, and the license tax levied under said ordinance could be collected against any one delivering or unloading goods in the City of Trussville that were brought in from outside the city. In support of this conclusion the opinion stated:

"\* \* \* that a license tax whether levied by a municipal ordinance or by a State statute is a tax levied for the privilege of doing a certain thing in the jurisdiction involved and is often referred to as a privilege tax. It is well to recognize that such a tax can be validly levied on the privilege of doing a certain thing or performing a certain act as well as engaging in a certain business, profession, or calling. \* \* \*

"In *Sanford v. City of Clanton*, 244 Ala. 671, 15 So. 2d 303 and *Sanford Service Co. v. City of Andalusia*, 256 Ala. 507, 55 So. 2d 856, the defendants in those cases were delivering their own products (motor fuels) which they were engaged in selling. Neither of the defendants were motor carriers or engaged in the transportation business. They made deliveries in their own trucks, delivering their own products in Clanton and in Andalusia, respectively.

"In both instances the defendants were held to be subject to the license tax levied on the privilege of making deliveries of petroleum products in those cities. \* \* \* "

Hence, it is my opinion that based on the factual situation presented by your request for an opinion the tax may be levied and collected.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

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March 3, 1964

Honorable Charles H. Younger  
City Attorney  
City Hall  
Huntsville, Alabama

Elections — Municipalities — Statutes.

1. A statute of general application will not by implication repeal a statute of local application.

2. The 1964 general municipal election in the City of Huntsville will be controlled by Act No. 395, Acts of Alabama 1961, page 407.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of February 13, 1963, is as follows:

"Act No. 395 of the 1961 Regular Session of the State Legislature was a general act of local application relating to the conduct of elections of the Mayor and Council. This act provides that the Mayor and Council shall be elected at an election to be held on the first Tuesday next after labor day in the year 1964 and every four years thereafter for a term of four years, commencing on the first Monday in October next after the election. This act further provides for a second or 'run-off' election to be held on the last Tuesday in September next after the initial election. Act No. 395 was approved August 7, 1961.

"Act No. 663 of the 1961 Regular Session of the State Legislature was an act regulating general and special elections in cities and towns of this state, except those cities and towns which have a commission form of government. This act provided that regular municipal elections in cities and towns shall be held on the second Tuesday in August, 1964, and quadrennially thereafter. This act further provided that when necessary a second or 'run-off' election shall be held on the first Tuesday after the second Monday in September. Act No. 663 was approved September 6, 1961. Act No. 663 has been incorporated as Title 37, Sections 34(20) through 34(72), Code of Alabama, 1940 (1958 Recompiled).

"The City Council of the City of Huntsville, Alabama therefore desires your opinion as to which of the above acts shall govern the calling of the general election for Mayor and Councilmen for 1964 and thereafter."

Act No. 395, Acts of Alabama 1961, page 407, the general law of local application to which your request refers, applies to municipalities having populations of not less than 70,000 nor more than 120,000 inhabitants, according to the 1960 or any subsequent Federal Decennial Census.

The 1960 census shows that the City of Huntsville has a population of 72,365 inhabitants.

Act No. 663, Acts of Alabama 1961, page 827, the general law to which your request refers, repeals all laws or parts of laws in conflict with its provisions. See Section 54 of said Act. However, Act No. 663, *supra*, does not specifically repeal Act No. 395, *supra*.

In a long line of cases the Supreme Court of Alabama has held that a general law will not repeal by implication a local law although such local law is, in form, a general law and is enacted as such. See **Bates et al, Commissioners of Mobile v. State ex rel. Conniff**, 240 Ala. 609, 200 So. 779. See also Quarterly Report of Attorney General, Vol. 20, page 54.

When statutes are considered by the legislative body at the same time and enacted at the same session, the rule disfavoring repeal by implication is accentuated. **Stone v. State ex rel. Lartique**, 30 Ala. App. 162, 2 So. 2d 334.

In **State ex rel. Tyson v. Houghton**, 142 Ala. 90, 38 So. 761, the Court stated in part as follows:

"... When both acts have the same scope, it may be difficult to give both a field of operation; but where, as here, although re-

lating to the same subject-matter, one is local in its operation, and the other general, each having a distinct field of operation, what might seem a conflict between the two disappears in finding spheres for the operation of both. In such a case the latter general act does not repeal the former local act unless a repeal is necessary to give the words of the general act any meaning at all . . ."

Premises considered, I am of the opinion that Act No. 395, *supra*, will control the 1964 general municipal election in the City of Huntsville.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

March 4, 1964

Hon. C. C. (Jack) Owen  
President

Ala. Public Service Commission  
P. O. Box 991  
Montgomery 2, Alabama

Ala. Public Service Comm. — Words and Phrases

Where liquid nitrate of ammonia is to be used as a fertilizer, the transportation thereof is exempt from regulation and control by the Ala. Public Service Commission.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion bearing date of January 30, 1964, is as follows:

"Section 301 (2), Title 48, Code of 1940, as amended, contains certain commodity exemptions from regulation under the motor carrier act. Included in these commodities that are exempt is 'fertilizer.'

"You have ruled within recent months that sulphuric acid is not a fertilizer that would be exempt for the reasons stated in your

opinion. Now the question has come up on the question of liquid nitrate of ammonia. Different from sulphuric acid, nitrate of ammonia is itself a fertilizer while it generally goes under its proper chemical name. It is applied directly to the soil and I am informed it has no other use than as a fertilizer. Sulphuric acid, of course, is used for other purposes.

"It appears to me that since nitrate of ammonia in liquid form is itself a fertilizer and has no other uses that the transportation of liquid nitrate of ammonia would be exempt under the section referred to but we would like very much to get your official opinion on this subject.

"I will appreciate your opinion at your earliest convenience."

Title 48, Section 301 (2), Code of Alabama 1940, as Recompiled 1958, provides, in pertinent part, as follows:

" \* \* \* (3) Motor vehicles while used in the transportation of property when the owner of the vehicle is legally and regularly engaged in the business of selling such property and is the owner and has the legal title to the motor vehicle involved, also motor vehicles if engaged in hauling milk, livestock, coal, logs, lumber, poles, pulpwood, cotton in bales, cottonseed, fertilizer, peanuts, potatoes, or any other agricultural commodity of any kind (but not manufactured products thereof), \* \* \* "

You have asked whether or not the transportation of liquid nitrate of ammonia is exempt from the provisions of the Alabama Motor Carrier Act for the reason that it is a fertilizer within the meaning of Section 301 (2), supra.

I have been advised by an official in the State Department of Agriculture that liquid nitrate of ammonia is used principally as a fertilizer. Usually, I was informed, the nitrate of ammonia is transported in a dry crystalline form rather than liquid, and the liquid usually was added just before use.

In the case of **Jones v. State**, 60 So. 2d 805, 215 Miss. 355, it was held that "ammonium nitrate" was a colorless crystalline salt that could be used as fertilizer.

In **Plantation Anhydrous Ammonia Corp. v. Anhydrous Ammonia Company**, 101 So. 2d 699, the Supreme Court of Louisiana said that anhydrous ammonia is used extensively as a fertilizer.

Consequently, it is my opinion that if liquid nitrate of ammonia is to be used as a fertilizer, then the transportation thereof to the site

where it is to be so used, would come within the provisions of Section 301 (2), supra. However, if it is not to be used as a fertilizer, but is destined for other uses, then in that event, the transportation thereof would not be exempt.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

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March 5, 1964

Honorable Mac Thomas  
Judge of Probate  
Coosa County  
Rockford, Alabama

Elections — Candidates — County Superintendents of  
Education.

The certificate required to be filed by prospective candidates for county superintendent of education under the provisions of Title 52, Section 104, Code of Alabama, 1940, may be filed at any time before the probate judge has the ballots printed.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion of this office, under date of March 2, 1964, is as follows:

"Does the Certificate that is required to be filed with the Judge of Probate under the provisions of Title 52, Section 104, have to be filed before the deadline for qualifying, or may it be filed any time before the Judge of Probate has the ballots published?"

This office has heretofore answered the question propounded by you in a letter under date of March 10, 1958, to Honorable Hunter Phillips, Judge of Probate of Choctaw County. Due to the fact that this was not a published opinion of the Attorney General, I deem it advisable to reiterate the holding therein enunciated and further deem it advisable to set forth the facts and the conclusion reached in that opinion, which reads as follows:

"Mr. Jarrell McDaniel of Silas, Alabama, filed his Declaration of Candidacy and qualified with the Chairman of the Democratic Ex-



ecutive Committee of this County on March 1st, to run for Superintendent of Education in the Primary Election, of May 6th.

"Mr. McDaniel later learned that he should have filed a certificate signed by the State Superintendent of Education with the Probate Judge of his County, showing that he holds a certificate of Administration and Supervision as required by law under Title 52, Section 104 of the 1940 Code of Alabama. As soon as Mr. McDaniel was informed about the filing of this certificate he came by my office and asked me to file same. I marked the certificate filed as of March 4th, 1958, which was the day it was presented to me. In view of this, I will appreciate it if you will advise me if it is legal for me to accept and file Mr. McDaniel's certificate of Administration and Supervision as of this date.

"Since Mr. McDaniel failed to file his certificate on or before March 1st, I would also like for you to advise me if he can qualify as a candidate for nomination as County Superintendent of Education, in the coming Primary Election.'

"In answer to your first question, you are advised that it is perfectly legal for you to accept and file Mr. McDaniel's certificate of administration and supervision even though said certificate was filed in your office on March 4, 1958.

"In answer to your second question, you are advised that regardless of the fact that Mr. McDaniel's certificate of administration and supervision was filed in your office on March 4, after he had qualified with the chairman of the county democratic executive committee prior to March 1, he is a legally qualified candidate for said position and his name should be placed on the ballot.

"The Supreme Court considered an identical situation as outlined by you in the case of **Stacy, Probate Judge v. Brown**, 46 So. 2d 857, 253 Ala. 699. In this case Mr. Brown qualified with the chairman of the democratic executive committee for the office of the county superintendent of education. Eight days after he qualified and paid his qualification fee to the chairman of the county democratic executive committee, he filed his certificate of administration and supervision with the probate judge. He requested the probate judge to place his name upon the ballot to be used in the primary election to be held in that year on May 2. Due to the fact that Mr. Brown did not first file his certificate of administration and supervision with the probate judge, the probate judge, under the provisions of Section 104 of Title 52, Code of Alabama 1940, refused to place his name upon the ballot. Mr. Brown instituted mandamus proceedings against the probate judge seeking a court order directing the probate judge to place his name upon the ballot to be used in the primary election. After pleading and argument in the case, the

circuit judge issued the writ of mandamus and under the above stated facts ordered the probate judge to place Mr. Brown's name upon the ballot to be used in the primary election during that year. There was an appeal taken by the probate judge from the order of the circuit judge, directing and ordering him to place Mr. Brown's name upon the ballot. This case was affirmed by the Supreme Court in the above cited case without an opinion.

"You are, therefore, advised that under the authority of the Stacy case, supra, you may legally accept Mr. McDaniel's certificate of administration and supervision and if his name is certified to you by the chairman of the county democratic executive committee as having duly qualified with him, then you should place his name upon the ballot."

I have been advised that the factual situation as outlined in the letter to Honorable Hunter Phillips, which is hereby made official, is identical with the factual situation existing in your county in regard to the qualifying of the candidate for county superintendent of education.

Yours very truly,

**RICHMOND M. FLOWERS**  
Attorney General

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March 5, 1964

Honorable Howard Kirby  
Circuit Clerk of Etowah County  
Gadsden, Alabama

Etowah County — Solicitors — Costs and Fees — Game and Fish.

1. A Solicitor's fee of \$10.00 is properly imposed where a defendant is convicted for the violation of the game and fish laws in the Etowah County Court.
2. Such fee is imposed irrespective of whether the defendant pleads guilty or not guilty.

Opinion by Assistant Attorney General Bridges.

Dear Mr. Kirby:

Your request for an official opinion bearing date of January 30, 1964, is as follows:

"Please refer to Section 7 of Local Act No. 91 passed by the 1963 Regular Session of the Legislature and approved by the Governor on June 27, 1963, and render to me your opinion on the following matter.

"In view of the provisions and requirements of said section of said Act, shouldn't I tax and collect a Solicitor's fee in cases where a defendant is tried and convicted in the County Court of Etowah County on charges of violating the Game and Fish laws? If such fee is taxable in such cases when a defendant is tried and convicted, is it also taxable when a plea of guilty is entered?

"If a Solicitor's fee is taxable in cases stated, should the amount be ten dollars under the provisions of Section 85, Title 11, where it states: 'For, Ten Dollars?'"

It is my opinion that a Solicitor's fee of \$10.00 should be taxed as a part of the costs in each case where a defendant is convicted in the Etowah County Court on charges of violating the game and fish laws of this State and that this fee should be taxed in those cases of conviction after a plea of "guilty" as well as in cases of conviction after a plea of "not guilty."

Act No. 91, General and Local Acts 1963, Regular Session, page 475, created the Etowah County Court, a court with "original jurisdiction of misdemeanors committed within the county" and other jurisdiction not here pertinent.

Section 7 of Act No. 91, *supra*, provides as follows:

"It shall be the duty of the deputy solicitor for Etowah County to prosecute criminal cases in the court. The same solicitor's fees shall be taxed in misdemeanor cases in this court, in the same manner as such fees are taxed by general law for solicitors in similar cases in the circuit and county courts of the state. All solicitor's fees, when collected shall be paid into the county treasury as other costs. It shall be the duty of the deputy solicitor for Etowah County to attend and prosecute all juvenile and non-support cases arising in Etowah County."

As your letter states Title 11, Section 85, Code of Alabama 1940, Recompiled 1958, authorizes a Solicitor's fee of \$10.00 "for each conviction of a misdemeanor, not otherwise provided for." Violations of game

and fish laws are classified as misdemeanors. See Title 8, Sections 15—171(21), Code of Alabama 1940, Recompiled 1958, as amended.

Title 8, Section 50, Code of Alabama 1940, Recompiled 1958, is as follows:

**"The solicitor of any county, or deputy solicitor of any county, in which any violation of the provisions of the game and fish laws or the rules and regulations set out therein, shall have occurred, shall appear on behalf of the state and prosecute the offender. No solicitor's fee shall be taxed against the defendant in any justice of peace court or court created in lieu thereof or court of like jurisdiction."** (Emphasis supplied.)

An examination of the statutory provisions cited above leads me to conclude that when a person is convicted of violating any of the game and fish laws of this State, he is guilty of a misdemeanor; that a Solicitor's fee of \$10.00 for such conviction is provided by the general law and that the exclusion clause in Title 8, Section 50 (underlined portion) does not apply to the Etowah County Court, said court is in fact a county court with some additional powers granted by the legislative act which created it. Act No. 91, supra.

The Solicitor's fee attaches for each **conviction** (Title 11, Section 85, supra) and the taxing thereof is not effected by the defendant pleading guilty to the charge in a particular case.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

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March 6, 1964

Honorable T. C. Almon  
Judge of Probate  
Morgan County Courthouse  
Decatur, Alabama

Taxation — Filing Tax — Mortgages

The mortgage tax levied under Section 619, as amended, Title 51, Code of Alabama 1940, should be measured by the amount of principal indebtedness incurred and should not include interest payments.

## Opinion by Assistant Attorney General Loeb.

Dear Judge Almon:

Your request for an official opinion bearing date of February 17, 1964, is as follows:

"I have had presented to me for filing and recordation a chattel mortgage to secure a note payable in installments over a period of years, the aggregate amount of the installments being \$623,576.96. These installments include both principal and interest. The principal amount of the indebtedness secured is \$495,500. So that you will fully understand the question submitted to you, a copy of the mortgage is attached hereto.

"The question has arisen whether the mortgage tax provided for by Section 619 of Title 51 of the Code of Alabama of 1940 should be calculated and paid on \$623,576.96 or on \$495,500.

"Your official opinion on this question is respectfully requested."

The provisions of the chattel mortgage here under consideration clearly show that the amount of principal indebtedness is \$495,500. Of course, the installment payments due under the mortgage aggregate \$623,576.96, but this amount includes all interest accruing on each payment.

It is the opinion of this office that mortgage tax should be collected only upon the principal amount of the loan and should not include any interest payments which may or may not be provided for in the mortgage. See Quarterly Report of the Attorney General, Volume 3, page 216.

For a holding that the same is true as regards deed privilege tax, see the opinion of this office contained in Quarterly Report of the Attorney General, Volume 59, page 73.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

March 10, 1964

Hon. Kermit A. Johnson  
Superintendent  
Jefferson County Board of Education  
408 Court House  
Birmingham 3, Alabama

County Boards of Education — Schools

The Jefferson County Board of Education may pay the expenses of one or more of its members to attend a meeting of the National School Boards Association.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion bearing date of February 14, 1964 is as follows:

"On behalf of the Jefferson County Board of Education, I would like to request an official opinion relative to the expenditure of funds of this board for the purpose of paying the expenses of a member or members of this board to the convention of the National School Boards Association, which this year is being held in Houston, Texas, on April 25-28, 1964.

"It is my understanding that members of some city boards of education are to attend this convention and their expenses will be paid from the funds of such boards of education. In an opinion handed down on February 19, 1943, and cited in Volume XXX, Page 73, **Opinions of the Attorney General of Alabama** Acting Attorney General William T. McQueen held that a city board of education was authorized to pay the expenses of its members to attend the meeting of the American Association of School Administrators.

"Your opinion relative to this matter will be respectfully appreciated."

The answer to your question is in the affirmative.

In an opinion of this office to The Chief Examiner of Accounts under date of June 16, 1928, found in Biennial Report of Attorney General 1926-28, page 601, it was held that a County Board of Education could pay the actual traveling expenses of the County Superintendent in attending a meeting of the National Education Association.

Also, in another opinion of this office, found in Volume 30, Quarterly Report of Attorney General, page 73, it was held that a City Board of Education could pay the expenses of a member thereof to a meeting of the American Association of School Administrators.

The basis of the above two opinions is that the meetings help school officials keep abreast of the advancements in the educational field, and, therefore, promote a more efficient school system in the State.

It is therefore my opinion that the Jefferson County Board of Education may pay the expenses of one or more of its members to attend a meeting of the National School Boards Association.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

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March 18, 1964

Honorable J. C. White  
Judge of Probate  
Chilton County Court House  
Clanton, Alabama

Taxation — Filing Tax — Deeds — Mortgages

1. Where a deed and purchase money mortgage are recorded simultaneously, mortgage tax should be collected upon the full amount of indebtedness recited in the mortgage and deed tax should be collected only upon the value in excess of the indebtedness recited in the mortgage.
2. If the deed is recorded first and the mortgage recorded later, or not at all, deed tax should be collected upon the full value of the property conveyed.
3. If the deed is recorded first and tax collected upon the full value of the property, and the mortgage is recorded later, mortgage tax should be collected upon the indebtedness incurred thereunder.

Opinion by Assistant Attorney General Loeb.

Dear Judge White:

Your request for an official opinion is as follows:

"A deed was filed in my office whereas the value under consideration was \$10,300.00. At the same time a Purchaser's Mortgage was filed in the amount of \$10,000.00.

"The questions I would like for you to answer are:

"1. Should my office charge deed tax on the \$10,300.00? or

"2. Should deed tax be collected only on the down payment or balance of \$300.00

"3. If the deed had been filed first and the mortgage filed at a later date, should the deed tax have been collected on the total value under consideration? (\$10,300.00)

"4. Would the mortgage be exempt from mortgage tax upon it being filed at a later date?"

The answer to question number one is in the negative.

The answer to question number two is in the affirmative. Where a deed and purchase money mortgage are recorded simultaneously, mortgage tax should be collected upon the full amount of indebtedness recited in the mortgage and deed tax should be collected only upon the value in excess of the indebtedness recited in the mortgage. See Quarterly Report of the Attorney General, Volume 104, page 43; Quarterly Report of the Attorney General, Volume 110, page 10.

If the deed is recorded first and the mortgage is recorded later, or not at all, then deed tax should be collected upon the full value of the property conveyed since Section 618, as amended, Title 51, Code of Alabama 1940, expressly states that:

"... only the value in excess of any mortgages or vendors lien upon any property within this state **on which the mortgage tax has been paid**, shall be taxable under this section . . ." [Emphasis supplied]

See opinion of this office rendered to Honorable O. D. Alsbrook, Probate Judge, Chambers County, Alabama on February 28, 1964.

Of course, if the evidence before you makes it clear that a purchase money mortgage has been executed, and you are reasonably satisfied that the mortgage will be brought to your office within the



next few days for recordation, you may use your own discretion as to whether to collect tax on the amount in excess of the mortgage indebtedness, or upon the full amount of value with the understanding that the excess will be refunded if the mortgage is subsequently brought in before the money is distributed by your office at the end of the month or such other time as you may designate.

It should be made clear that you would be fully justified in collecting on the full value of the deed where the mortgage has not been filed, either previously or simultaneously. Any decision to do otherwise would lie within your sole discretion, as pointed out above.

If the deed is recorded first and you have no knowledge of a purchase money mortgage and you have collected deed tax upon the full value of the property, and the mortgage is later brought in for recordation, you must collect the full amount of mortgage tax based upon the indebtedness incurred thereunder. Section 619, as amended, Title 51, Code of Alabama 1940, does not afford any exemption to a mortgage under the circumstances contained in your request.

Very truly yours,

RICHMOND M. FLOWERS  
Attorney General

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March 20, 1964

Honorable J. Paul Meeks  
Judge of Probate  
Jefferson County Courthouse  
Birmingham, Alabama

Taxation — Filing Tax — Deeds — Leases.

Where the assignment of a lease shows that the consideration therefor is the assumption of future rental payments and in addition thereto the payment of a cash consideration, deed tax should be determined by the probate judge using both of these factors, and any others relevant thereto.

Opinion by Assistant Attorney General Loeb.

Dear Judge Meeks:

Your request for an official opinion bearing date of January 8, 1964,

and the supplement to your original request, dated February 19, 1964, are as follows:

"We have for recording in this office an instrument entitled 'Agreement, Assignment of Lease, Acceptance of Assignment, Consent and Release' pertaining to a long term lease which was heretofore recorded and on which the computed deed tax was paid, wherein the original Lessee assigns and transfers to a third party (corporation) all interest as Lessee in and to the LEASE. The Lessor is a party to this assignment of lease and agrees to accept such third party and release the original Lessee.

"The Assignment is 'For and in consideration of the sum of \$35,000.00,' and the Assignee (Third Party) 'accepts and assumes the obligations of the Lessee under the Lease - -.' A copy of the Assignment is enclosed herewith.

"We are familiar with the previous opinions of your office holding 'that the assignment of a lease being as much a conveyance of interest as the original lease itself, should bear a tax to the extent of such assignment.' — 1934-36 Opinions of Attorney General, Pages 202 and 203.

"However, inasmuch as this assignment and transfer is 'for the consideration of \$35,000.00,' we respectfully request your opinion as to whether or not this instrument assigning the lease is subject to the deed tax.

"(1) On the \$35,000.00 cash consideration only, or

"(2) On the present value of the total rents to be collected under the terms of the lease agreement for the remainder of the term of the lease; or

"(3) On the \$35,000.00 cash consideration plus the amount of deed tax computed on the present value of the total amount of rents to be collected under the terms of the lease agreement for the remainder of the term of the lease."

\* \* \* \* \*

"In answer to your inquiry, this is to supplement our letter of January 8, 1964, requesting an Attorney General's opinion as to the proper deed tax to be collected on the 'Agreement, Assignment of

Lease, Acceptance of Assignment, Consent and Release' of the long term lease assignment by Birmingham Cabana, Inc. to Parliament House, Inc. The assignment transfers and assigns all rights and interests of the Birmingham Cabana, Inc., as lessee, to Parliament House, Inc., as successor lessee, in and to the lease agreement, and is in consideration of the payment of the sum of \$35,000.00 (cash) and the agreement to pay all the remaining rents coming due under the remaining period of the lease agreement, 'accepts and assumes the obligations of the lessee under the lease.'

"We are enclosing a copy of some of the pertinent provisions of the original lease agreement by and between Jefferson Specialties, Inc., as lessor, and Birmingham Cabana, Inc., as lessee (original lessee)."

As indicated in your original request, this office has previously ruled that the assignment of a lease, being as much a conveyance of interest as the original lease itself, should bear to tax to the extent of such assignment. Biennial Report of the Attorney General, 1934-36, page 202. This means when a lease is assigned that deed tax should be collected on the full value of the interest conveyed. Ordinarily, the consideration for an assignment of a lease is the assumption of payment of all remaining rentals due under the lease. However, in this case, based upon the facts contained in your original request as well as those in your supplemental letter, the consideration for the transfer from Birmingham Cabana, Inc. to Parliament House Motor Inns, Inc. appears to be not only the assumption of the remaining rent payments, but also the additional payment of \$35,000 in cash.

It is now settled that the determination of value of the property from which the amount of filing tax is ascertained is a question directed to the Probate Judge acting in his judicial capacity. Quarterly Report of the Attorney General, Vol. 90, page 28; Quarterly Report of the Attorney General, Vol. 86, page 23; Quarterly Report of the Attorney General, Vol. 58, page 90. Based upon the facts set out above, it would be my suggestion that, in computing the deed tax due under this assignment, you consider both the present value, if there be any, of the remaining rental payments and the \$35,000 consideration paid for the assignment. Any other factors relevant thereto should also be taken into consideration by you in reaching a determination of the amount due.

Very truly yours,

**RICHMOND M. FLOWERS**  
Attorney General

March 20, 1964

Honorable Isaac Johnson, Jr.  
Judge of Probate  
Lawrence Count Courthouse  
Moulton, Alabama

License Taxes — Detectives

Person operating a detective agency who has paid the license under Title 51, Section 505, Code of Alabama Recompiled 1958, for the current year in one county in this State, not required to pay license again in other counties in which he conducts such business, unless he maintains a place of business in such other counties.

Opinion by Assistant Attorney General Burton

Dear Sir:

Reference is made to your request for an official opinion of this office dated February 12, 1964, which reads as follows:

"I would like an attorney general opinion on the following: If a man buys a detective license under 505. Operating the business of finding people for the reward they would collect. If they buy state and county license in Lawrence County and want to go into other counties looking for people would he have to buy a county license in each county he goes into?"

The answer to your question is in the negative, unless the person operating the detective agency maintains a place of business in the other counties in which he conducts such business. Title 51, Sections 505 and 831(a), Code of Alabama Recompiled 1958. See also **Metcalf, as Commissioner of Revenue v. Sperry and Hutchinson Company**, 268 Ala. 623, 108 So. 2d 831, 835.

Very truly yours,

**RICHMOND M. FLOWERS**  
Attorney General

March 31, 1964

Honorable Dean Germany  
Member, Jackson County Board of Education  
Dutton, Alabama

Schools — County Boards of Education — Jackson County —  
Constitutionality — Expenses

Act No. 181, approved September 15, 1961, Special Session, Acts of Alabama 1961, page 2154, applicable to counties of a population spread including Jackson County, and providing for an expense allowance to members of the County Board of Education thereof, in fact, provides for an increase in compensation. However, subject to the limitations expressed in the opinion proper, said Act became effective after its approval date as to all members of said board (whose terms do not run concurrently) immediately after the expiration of the term or terms of office of the member or members whose term or terms first expire, under the provisions of Amendment XCII (92) of the Constitution of Alabama 1901.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of March 14, 1964, is as follows:

"I am a member of the Jackson County Board of Education. I was duly elected to this office and am serving a six-year term which began in November 1960. In a Special Session of the State Legislature in 1961 Act # 181 applying to Jackson County was passed. "Under the provisions of this Act please render your opinion on the following questions:

"1. Under the laws of Alabama am I entitled to be paid the 'expense allowance' as provided by the said Act?

"2. If your answer to question number one above is in the affirmative, am I entitled to draw this "expense allowance' retroactively to the effective date of the Act?"

I am of the opinion that your first inquiry should be answered in the affirmative, subject to the limitations set out below, and your second inquiry in the negative.

Act No. 181, approved September 15, 1961, Special Session, Acts of Alabama 1961, page 2154, provides in pertinent part as follows:

"Section 1. The members of the Board of Education of any county having a population of not less than 36,600 nor more than 37,600 inhabitants according to the 1960 or any subsequent federal decennial census shall receive in addition to all other compensation now provided by law, an expense allowance of \$100.00 per annum. "The County Board of Education in any such county is hereby authorized and directed to pay to the members of the County Board of Education the \$100.00 expense allowance provided in this Act in equal monthly installments, out of any funds available for the payment of other salaries for school employees of any such county.

"Section 2. All laws or parts of laws which conflict with this Act are repealed."

Although this office has no authority to declare an act of the legislature unconstitutional, I wish to point out that there is grave doubt as to the constitutionality of Act No. 181, supra, as the population classification therein set out is based on a "spread" of only 1000 persons, which is not reasonably related to the purpose to be affected. said act, in my judgment, is, in fact, a local act passed under the guise of a general law with local application, and hence in violation of Section 106 of the Constitution of Alabama 1901.—Opinion of the Justices, 262 Ala. 180, 78 So.2d 1.

Pretermittting the question of the constitutionality of Act No. 181, supra, as being violative of Section 106 of the Constitution, supra, Section 281 of said Constitution and Amendment XCII (92) thereto, known as the "Boutwell Amendment," both of which prohibit the increasing or decreasing of the compensation of certain officers during the term for which they were appointed or elected, must be taken into consideration.—Quarterly Report of Attorney General, Volume 112, page 58; letter to Honorable W. Loy Campbell, Attorney County Board of Education of Jackson County, dated February 16, 1962.

Amendment XCII (92), supra, contains the following special provisions which are applicable to your situation as some of the members of the Board of Education of Jackson County were elected in 1932, one was elected in 1934, two in 1936, and by class each six years thereafter under Local Acts 1931, page 173:

"As to officers who are members of any court, board, commission, or similar body whose terms do not run concurrently any increase or decrease in the salary, fees, or other compensation of the members of any such court, board, commission, or similar body shall

become effective as to all such members thereof immediately after the expiration of the term or terms of office of the member or members whose term or terms first expire." [Emphasis supplied]

The increase in compensation under Act No. 188, *supra*, could not become effective until the expiration of the term of the member whose term first expired, which was in 1963, after said Act was approved September 15, 1961.

It is true that this office in an opinion to Honorable John T. Black, Solicitor of the Ninth Judicial Circuit, Fort Payne, Alabama, dated October 11, 1963, held as follows:

"A flat expense allowance, if based on a reimbursement to the officer concerned for expenses incurred by him in the performance of his official duties and bearing a reasonable and substantially accurate relationship to the actual expenses incurred, is not considered as an increase in compensation and may be given to said officer during his term.—Quarterly Report of Attorney General, Volume 81, page 43; letter to Honorable Sim L. Howell, Chairman, Board of Revenue and Control, Morgan County, Alabama, dated October 13, 1955. This is likewise true as to an increase in an expense allowance already existing."

The expense allowance in question does not fall within the above rule, as members of county boards of education receive actual traveling and hotel expenses incurred in attending meetings and transacting business of the board under Title 52, Section 68, Code of Alabama 1940. This includes necessary meals.—Quarterly Report of Attorney General, Volume 15, page 17. Since there is already a reimbursement for actual expenses incurred, the expense allowances provided for in Act No. 181, *supra*, would amount to an increase in compensation. Moreover, said Act specifically provides the same to be in addition to all other compensation now provided by law.

As above stated, this office has no authority to declare an act of the legislature unconstitutional, but it may merely express an opinion in regard thereto. Your attention is invited to Title 41, Section 58, Code of Alabama 1940, Recompiled 1958, which provides as follows:

"When any state or county official shall have collected or paid out any money, as fees, salary or compensation for official services rendered under any law of Alabama, general or special, which law, subsequent to such collection or paying out, shall be declared by the supreme court of Alabama to be unconstitutional or void or

illegal, such officer shall not be liable, either individually or on his official bond, in any suit brought for the recovery of such money, so collected or paid out, nor shall the person to whom the same shall have been paid, be liable therefor."

For a construction of the provisions of said section, see Quarterly Report of Attorney General, Volume 35, page 43.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

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March 31, 1964

Honorable Charles E. McNeil, President  
Mobile County Board of School Commissioners  
Box 1549  
Mobile, Alabama

Schools — County Superintendents of Education —  
Constitutionality — Mobile County

Title 52, Section 130, Code of Alabama 1940, requiring the county governing body of a county to provide its superintendent of education and his professional and clerical assistants with office quarters, necessary furniture, office equipment, stationery, postage, forms and supplies, has no application to Mobile County in view of the provisions of Section 270 of the Constitution of Alabama 1901, as amended by Amendment CXI(111).

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of March 2, 1964 is as follows:

"Under and pursuant to the provisions of law of the State of Alabama which authorized and require the Attorney General to give his opinion on any question of law connected with the duties of, among others, county boards of education, when requested so to do in writing, and particularly under and pursuant to the provisions of Sections 240 and 241 of Title 55 of the Code of Alabama



of 1940; the Board of School Commissioners of Mobile County (Hereinafter sometimes styled the 'School Board' or 'Board') does hereby request, of you in writing, your opinion on the questions of law connected with the duties of the said School Board, as set out hereinafter.

"First are stated the facts out of which grows the question propounded.

### **"The Facts**

"In the latter part of October, 1963, the Board of School Commissioners of Mobile County received, from the office of the Examiner of Public Accounts, a report of the audit of the Board's accounts during the period from October 1, 1959 through September 30, 1962, such report being based upon the examination made by the auditor for the Examiner's office. Set out below is a quotation, taken from Page E of the State Examiner's report, covering the matters touching which this letter is written and inquiry made:

"'office supplies, stationery, postage, telephone, etc. for the office of the Superintendent were paid from public school funds and we were advised that this practice had been followed for a number of years. We were unable to find any statutory authority for such payments being made from public school funds. The provisions of general statutes as found in Title 52, Section 130, Code of Alabama 1940, requires county governing bodies to pay for such expenditures. Due to the numerous school statutes and constitutional provisions especially affecting the schools of Mobile County, it is felt that it is entirely possible that some interpretations of these legal enactments and provisions may lead to the conclusions that such expenditures from public school funds may be proper. Attention is directed to this matter in order that a clarification and/or definite determination be made with regard to the above by an opinion of the Attorney General to those officials concerned with and responsible for such expenditures.'

"The Board of School Commissioners of Mobile County operate the largest school system in the State of Alabama. There is a pupil load of approximately 30,000 children; some 2,500 teachers; and a large administrative staff. The administrative staff consists of the Superintendent, Associate Superintendent, five Assistant Superintendents, a Treasurer-Comptroller, a Forester, and a considerable number of Heads of Bureaus and subordinate divisions; the appropriate clerical help; janitorial, maintenance, bus drivers and other transportation workers, and a considerable number of miscellaneous employees. The total annual expense incurred by the Office of the County Superintendent and his professional and clerical assistants and the necessary furniture, office equipment,

stationery, postage, forms and supplies required in the conduct of the business of the office, aggregate some \$80,000.00 annually. These expenditures have always been made by the School Board from the public school funds that it administers.

"Do the Provisions of general statutes as found in Title 52, Section 130, Code of Alabama of 1940, require the County Commission of Mobile County (the governing body of Mobile County) to pay the expenditures of the type noted; this forbidding the use of public school funds for such expenditures?

#### **"Discussion of the Pertinent Law**

"It will be noted that the auditor stated that 'due to the numerous school statutes and constitutional provisions especially affecting the schools of Mobile County, it is \*\*\*\*\* entirely possible that the practice pursued by the School Board is justified by law.

"The auditor's surmise was right, it is respectfully thought. There are special provisions to take the system operated by the Board of School Commissioners of Mobile County, without the purview of Section 130 of Title 52 of the Code, referred to by the Examiner. "Section 270 of the Constitution of Alabama of 1901, as amended by Amendment No. CXI, declares:

"The provisions of this article and of any act of the legislature passed in pursuance thereof for educational purposes, shall apply to Mobile County only so far as to authorize and require the authorities designated by law to draw the portions of the funds to which said County shall be entitled for school purposes and to make reports to the superintendent of education as may be prescribed by law; and all special incomes and powers of taxation as now authorized by law for the benefit of public schools in said county shall remain undisturbed until otherwise provided by the legislature.'

"The 'article' referred to in Section 270 of the Constitution, just quoted, is Article XIV, which deals with the general subject of 'Education.' The phrase 'any act of the Legislature passed in pursuance thereof for educational purposes' refers to any act passed pursuant to the State's general legislative educational scheme. Title 52 (commonly referred to as the School Code) constitutes the State's general legislative scheme for the schools. Section 270 of the Constitution takes Mobile County out of this general legislative scheme except so far as is provided in the language of the said Section 270. The exceptions contained in that Section have no application to the matter now under consideration.

"This semi-autonomous situation of the school system in Mobile County was considered exhaustively in **Morgan vs. Board of School Commissioners of Mobile County**, 248 Alabama 22. The opinion, in the **Morgan** case, traces the history of what is now Section 270 of the Constitution, and seems clearly and conclusively to support the thought that the provisions of Section 130, Title 52 of the Code of Alabama of 1940 are inapplicable to Mobile County. There are quoted below excerpts from the Court's opinion in the **Morgan** case, to sustain the statement just made:

"In 1875 the settled policy of taking Mobile County out from the general scheme of public school legislation was written into the Constitution of Alabama of 1875 as Section 11 of Article XII. The same Constitutional provision was carried forward without substantial change in the Constitution of 1901, where it forms Section 270 of Article XIV, the Article on Education, \*\*\*\*." (Opinion, p. 24)

"There is then set out the text of Section 270 and an analysis of its provisions. That analysis points out that the Section contains: 'a restriction that the Legislature may not apply to Mobile County any general public school legislation on the subjects embraced in Article XIV of the Constitution of 1901, except so far as it provides for Mobile County to get its share of the general public school funds, and to require the local school authorities to make such reports to the Superintendent of Education as may be prescribed by law.' (Opinion p. 26)

"Attention is drawn also to the statement of the court in **Covington vs. Thompson**, 142 Alabama 98, quoted on p. 26 of the opinion in the **Morgan** case, following the matter quoted above in this letter. Attention is further drawn to the quotations from the proceedings of the Constitutional Convention of 1901, touching the adoption of Section 270 of that Constitution, which quotations from the Conventional proceedings are set out on p. 25 of the opinion in the **Morgan** case.

"Some of the matter hereinbefore contained, was set out in my letter to you under date January 11, 1964, (Answered by your letter of January 24), with reference to a travel-allowance question raised by the auditor. The primary question involved there was whether or not a change; from an expense-account-keeping method of keeping track of the travel allowance, to a flat \$1200 a year (such change being made during the term of the office of the Superintendent); was a violation of those provisions of the Constitution which forbid the increase of compensation of a public officer during his term of office.

"It was never thought by our Board that Section 270 affected in any way the other Constitutional provisions, outside of Article

XIV, applicable to a public officer; and we stated that Dr. Burns is, in our opinion, a public officer.

"Hence it did not become necessary for you to consider the question now arising and submitted to you and necessary to be determined now. In this connection it is thought desirable to draw to your attention that the case of **Board of School Commissioners of Mobile County vs. Hahn**, 246 Ala. 662 (cited in the first paragraph on the last page of your opinion) was considered and limited by the Supreme Court in the **Morgan** case at p. 26 of the opinion.

"The Board was advised by its attorney that, in his opinion, Section 130 of Title 52 of the Code of Alabama of 1940 is not applicable to Mobile County; but in view of the auditor's suggestion and because of our desire to continue our cordial and harmonious relations with the State Examiner's Department, the Board thought it advisable to seek the Attorney General's opinion as suggested by the auditor."

In answer to your inquiry, it is my opinion that Title 52, Section 130, Code of Alabama 1940, requiring the county governing body of a county to provide its superintendent of education and his professional and clerical assistants with office quarters, necessary furniture, office equipment, stationery, postage, forms, and supplies, has no application to Mobile County in view of the provisions of Section 270 of the Constitution of Alabama 1901, as amended by Amendment CXI(111).

Although the question presented is not free from doubt, the language and the holding in the case of **Morgan v. Board of Commissioners of Mobile County**, 248 Ala. 22, 26 So.2d 108, lead me to the above conclusion. Section 270 of the Constitution of Alabama 1901, *supra*, exempts Mobile County from general public school legislation except in matters not here pertinent.—**Tucker v. State**, 231 Ala. 350, 165 So. 249. The proviso in Title 52, Section 130, *supra*, requiring the county to furnish certain items for its county superintendent of education is, in my judgment, part of the general public school legislation. It is not for the benefit of particular individuals, as in the case of tenure of service of school teachers, considered in the cases of **Board of School Commissioners of Mobile County v. Hahn**, 246 Ala. 662, 22 So. 2d 91; and **Board of School Commissioners of Mobile County v. Hudgens**, 274 Ala. 647, 151 So.2d 247.

The above is in accord with the administrative construction over a long period of time, which administrative construction is entitled to great weight in the construction of a statute, the application or meaning of which is doubtful. *Ex parte Darnell*, 262 Ala. 71, 76 So.2d 770; **State v. Tuscaloosa Building and Loan Association**, 230 Ala. 476, 161 So. 530.

Yours very truly,

RICHMOND M. FLOWERS  
Attorney General

## I N D E X

QUARTERLY REPORT OF THE ATTORNEY GENERAL FOR THE  
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## INFORMAL OPINIONS

During the period covered by this Quarterly Report of the Attorney General, January 1, 1964 through March 31, 1964, the Attorney General rendered the following informal opinions. These informal opinions are not published in the Quarterly Report.

| Subject Matter              | Name of Addressee   | Date    | File No.      |
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| <b>CEMETETERIES</b>         |                     |         |               |
| Sales — Churches            | L. D. Owen, Jr.     | Mar. 6  | 428           |
| <b>CORPORATIONS</b>         |                     |         |               |
| Credit Unions — Minors      | Robert M. Cleckler  | Feb. 19 | Banking Dept. |
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| Appointment — Licenses      | Guy D. Roberts      | Feb. 6  | 335           |
| Elections — Supplies        | W. F. Maynor        | Mar. 12 | 317           |
| Employees — Retirement      | E. C. Boswell       | Jan. 28 | 341           |
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| Leases — Bids               | W. F. Maynor        | Feb. 6  | 317           |
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| Probation — Schools         | John W. Green, Jr.  | Feb. 6  | 321           |
| Sheriffs — Schools          | L. D. Wall          | Feb. 19 | 378           |
| Sheriffs — Uniforms         | John R. Phillips    | Mar. 30 | 111           |
| Sheriffs — Uniforms         | William F. Killough | Mar. 5  | 424           |
| <b>CRIMINAL LAW</b>         |                     |         |               |
| Attorneys — Indigents       | Frank J. Kearney    | Jan. 13 | 258           |

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| Motor Vehicles — Sizes | Albert J. Lingo | Mar. 3  | Public Safety       |
| Motor Vehicles — Loads | Albert J. Lingo | Mar. 3  | Public Safety       |
| Records — Convicts     | Ruben King      | Jan. 12 | Pensions & Security |

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| Officials — Vacancies | E. A. Grouby             | Feb. 6  | 316                |
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| Poll Tax — Amount     | Isaac Johnson, Jr.       | Mar. 26 | 491                |
| Poll Tax — Residence  | Margaret L. White        | Jan. 27 | 284                |
| Primaries — Oaths     | Roy C. Maddox            | Mar. 4  | 434                |
| Primaries — Voters    | L. H. McDonald           | Mar. 30 | 501                |
| Voters — Challenges   | J. E. Spence             | Jan. 10 | 224                |
| Voters — Majority     | Joe C. McCorquodale, Jr. | Feb. 12 | 351                |
| Voters — Purging      | W. A. Evans              | Feb. 10 | 334                |

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| Records — Inspection    | W. H. Y. Smith | Jan. 2  | Health Dept. |
| Students — Examinations | Mrs. Bill Roe  | Jan. 2  | Health Dept. |

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| Contracts — Counties      | James E. Moore | Mar. 31 | 232         |
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| Deposits — Transfer                | Mary Texas Garner    | Jan. 2  | State Treas. |
| Schools — Contests                 | Harlan Long          | Feb. 26 | 407          |
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| Council — Meetings                 | Thomas A. Caddell    | Feb. 20 | 375          |
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| Industries — Application           | Leonard Beard        | Mar. 24 | Planning Bd. |
| Industries — Funds                 | J. M. Vann           | Mar. 5  | 425          |
| Legislature — Advertising          | Peter J. Palughi     | Jan. 10 | 112          |
| Officers — Elections               | S. L. Morris         | Feb. 19 | 370          |
| Officers — Employment              | E. G. Rickarby       | Feb. 10 | 331          |
| Officers — Employment              | Nello Richmond       | Feb. 13 | 339          |
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| Ordinance — Arrest                 | T. C. Roberson       | Mar. 6  | 70           |
| Police — Jurisdiction              | Shelby E. Ballard    | Feb. 10 | 332          |
| Police — Vacation                  | L. Drew Redden       | Mar. 30 | 496          |
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| Constables — Justices of Peace     | J. H. Dean           | Feb. 20 | 384          |
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| Hospitals — Administrator       | Cecil W. Brown   | Mar. 12 | 62  |
| Justice of Peace — Checks       | E. A. McFarland  | Feb. 10 | 328 |
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| of Education                    | J. H. Boockholdt | Mar. 9  | 412 |
| Legislature — Municipalities    | Henry W. Carson  | Mar. 5  | 443 |
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| Probate Judge — Salary          | E. B. Haltom     | Jan. 10 | 245 |

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| County Board of Education — Elections | Kermit A. Johnson | Feb. 19 | 380 |
| Statutes — Districts                  | E. O. Eddins      | Mar. 11 | 448 |
| Trespass — Fines                      | Howard Kirby      | Mar. 3  | 442 |

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| Patents — Confirmation           | Cecil C. Jackson, Jr. | Feb. 19 | Governors Office |
| Pensions & Security — Assistance | Milous Reese, Jr.     | Feb. 4  | 275              |

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| Filing Tax — Minerals      | Reo Kirkland    | Jan. 27 | 303 |

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| Filing Tax — Mortgages     | Wiley Hickman       | Feb. 4  | 315      |
| Income — Military          | Jesse O. Bryan      | Feb. 7  | 312      |
| Industries — Exemptions    | William S. Halsey   | Jan. 27 | 247      |
| Licenses — Trading Stamps  | Kenneth Megason     | Jan. 3  | 237      |
| Refunds — Small Loans      | W. C. Daniels       | Mar. 11 | 490      |
| Sales — Fish Bait          | Malcolm Edwards     | Jan. 24 | 299      |
| Sales — Rentals            | George Wilson Smith | Jan. 16 | 269      |
| Tobacco — Federal          | L. L. Cochran       | Jan. 1  | 262      |
| Utilities — Municipalities | Frank Bullington    | Feb. 26 | 408      |